

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FIRST FINANCIAL INSURANCE COMPANY,
an Illinois Corporation,

Plaintiff,

vs.

ZYN CORP., INC., d/b/a THE PALLADIUM;
JOE AL KITCHELL, III; STEVE KITCHELL,
NILS ANDERSON, a/k/a CHIP ANDERSON;
FRANK EUGENE BOLING, a/k/a JIM SLANKARD;
JOSE LEON ORDANEZ, a/k/a JOSE SANTANA; and
SCOTT ROCHON,

Defendants.

Case No. 90 C 166-C

F I L E D

AUG 31 1990

Jerome C. Silver, Clerk
U.S. DISTRICT COURT

JUDGMENT

On this 31 day of August, 1990, upon Motion and Affidavit of the plaintiff made for judgment by default this matter comes before the Court. It appears that the defendant, Jose Leon Ordanez, a/k/a Jose Santana, is in default and that the Clerk of the United States District Court has previously searched the records and entered the default of the defendant. It further appears upon plaintiff's Affidavit that default has been entered against defendant for failure to appear, and that defendant is not an infant or incompetent person.

The Court further finds that the plaintiff is seeking in its Second Amended Complaint declaratory judgment that the defendant is not a person insured under a policy of insurance issued to the Zyn Corp., Inc., d/b/a The Palladium; that there is no coverage under the policy for the defendant; and that the plaintiff does not owe the defendant a duty to defend.

The Court, based on the foregoing and being fully advised, finds that judgment should be entered for the plaintiff.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be granted for the plaintiff as prayed for in the plaintiff's Second Amended Complaint.

Judgment rendered this 31st day of August, 1990.

S/JOHN LEO WAGNER
UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HUBERT W. ELZA; DOROTHY M. ELZA;
RONALD D. WILKINS; COUNTY
TREASURER, Tulsa County,
Oklahoma; BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma; and STATE OF OKLAHOMA
ex rel. OKLAHOMA TAX COMMISSION,

Defendants.

FILED

AUG 31 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-480-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, State of Oklahoma ex rel. Oklahoma Tax
Commission, appears by its attorney, Lisa Haws; and the
Defendants, Hubert W. Elza, Dorothy M. Elza and Ronald D.
Wilkins, appear not, but make default.

The Court, being fully advised and having examined the
court file, finds that the Defendant, Hubert W. Elza,
acknowledged receipt of Summons and Complaint on June 27, 1990;
the Defendant, Dorothy M. Elza, acknowledged receipt of Summons
and Complaint on June 27, 1990; the Defendant, Ronald D. Wilkins,

was served with Summons and Amended Complaint on July 24, 1990; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Amended Complaint on July 17, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 6, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 6, 1990.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on June 25, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on June 25, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on July 30, 1990; and that the Defendants, Hubert W. Elza, Dorothy M. Elza and Ronald D. Wilkins, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), Block Five (5), TWIN CITIES
SUBDIVISION, an Addition to the City of
Tulsa, Tulsa County, State of Oklahoma,
according to the Recorded Plat thereof.

The Court further finds that on August 17, 1987, the Defendants, Hubert W. Elza and Dorothy M. Elza, executed and delivered to the United States of America, acting on behalf of

the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$24,000.00, payable in monthly installments, with interest thereon at the rate of 10 percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Hubert W. Elza and Dorothy M. Elza, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 17, 1987, covering the above-described property. Said mortgage was recorded on August 13, 1987, in Book 5045, Page 711, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Hubert W. Elza and Dorothy M. Elza, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Hubert W. Elza and Dorothy M. Elza, are indebted to the Plaintiff in the principal sum of \$23,782.33, plus interest at the rate of 10 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$24.68 (\$20.00 docket fees, \$4.68 fees for service of Summons and Complaint).

The Court further finds that the Defendants, Ronald D. Wilkins, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of Income Tax Warrant No. ITI90004612-00 in the amount of \$448.30 together with interest on the total tax at the rate of 15% per annum dated May 4, 1990 and recorded in Tulsa County on May 8, 1990 in Book 251 at Page 1626. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Hubert W. Elza and Dorothy M. Elza, in the principal sum of \$23,782.33, plus interest at the rate of 10 percent per annum from March 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action in the amount of \$24.68 (\$20.00 docket fees, \$4.68 fees for service of Summons and Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Ronald D. Wilkins, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the amount of \$448.30, plus

penalties and interest accrued and accruing, for Income Tax Warrant No. ITI90004612-00 dated May 4, 1990 and recorded on May 8, 1990 in Book 5251 at Page 1626 in the records of Tulsa County, Oklahoma.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Hubert W. Elza and Dorothy M. Elza, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$448.30, plus penalties and interest, for Income Tax Warrant No. ITI90004612-00.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

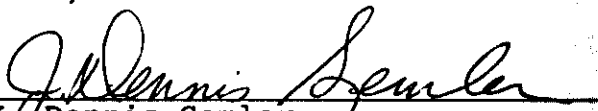
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY. M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. Dennis Semler
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


Lisa Haws
Assistant General Counsel
Attorney for State of Oklahoma
ex rel. Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 90-C-480-B

PP/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JIMMY DARYL SUMMERS; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-234-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, Jimmy Daryl Summers, appears not,
but makes default.

The Court being fully advised and having examined the
court file finds that the Defendant, Jimmy Daryl Summers, was
served with Summons and Amended Complaint on July 10, 1990; that
Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on March 22, 1990 and Summons
and Amended Complaint on March 22, 1990; and that Defendant,
Board of County Commissioners, Tulsa County, Oklahoma,

acknowledged receipt of Summons and Complaint on March 22, 1990 and Summons and Amended Complaint on March 23, 1990.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on April 11, 1990; that the Defendant, Jimmy Daryl Summers, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that on February 6, 1990, Jimmy Daryl Summers filed his voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 90-00276-C. On March 15, 1990, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-six (26), Block Eight (8), SMITHDALE, an Addition in Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on March 26, 1987, the Defendant, Jimmy Daryl Summers, executed and delivered to the United States of America, acting on behalf of the Administrator

of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$26,100.00, payable in monthly installments, with interest thereon at the rate of nine and one-half percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Jimmy Daryl Summers, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated March 26, 1987, covering the above-described property. Said mortgage was recorded on March 27, 1987, in Book 5011, Page 282, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Jimmy Daryl Summers, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Jimmy Daryl Summers, is indebted to the Plaintiff in the principal sum of \$25,808.01, plus interest at the rate of 9.5 percent per annum from February 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$31.88 (\$20.00 docket fees, \$11.88 fees for service of Summons and Amended Complaint).

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$144.60, plus penalties and

interest, for the year 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against the Defendant, Jimmy Daryl Summers, in the principal sum of \$25,808.01, plus interest at the rate of 9.5 percent per annum from February 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action in the amount of \$31.88 (\$20.00 docket fees, \$11.88 fees for service of Summons and Amended Complaint), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$144.60, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise

and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$144.60, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.


The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Amended Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

s/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-234-B

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL M. BLALOCK; LYNN C. BLALOCK
a/k/a LYNN BLAYLOCK JOHNSON; THE
TULSA URBAN RENEWAL AUTHORITY;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

AUG 31 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-999-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant, The Tulsa Urban Renewal Authority, appears by its
attorney, Doris L. Fransein; the Defendants, County Treasurer,
Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa
County, Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Carl M.
Blalock and Lynn C. Blalock a/k/a Lynn Blalock Johnson appear
not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Lynn C. Blalock,
acknowledged receipt of Summons and Complaint on December 18,
1989; that Defendant, County Treasurer, Tulsa County, Oklahoma,
acknowledged receipt of Summons and Complaint on December 5,
1989; and that Defendant, Board of County Commissioners, Tulsa

County, Oklahoma, acknowledged receipt of Summons and Complaint on December 5, 1989.

The Court further finds that the Defendant, Carl M. Blalock, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning April 6, 1990, and continuing to May 11, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Carl M. Blalock, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Carl M. Blalock. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in

ascertaining the true name and identity of the party served by publication with respect to his present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, filed its Answer on December 26, 1989; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on December 26, 1989; that the Defendant, Tulsa Urban Renewal Authority, now known as Tulsa Development Authority, filed its Answer and Cross-complaint on December 11, 1989; and that the Defendants, Carl M. Blalock and Lynn C. Blalock a/k/a Lynn Blalock Johnson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Twenty-four (24), Block Thirteen (13),
SUBURBAN HILLS ADDITION to the City of Tulsa,
Tulsa County, State of Oklahoma, according to
the recorded plat thereof.

The Court further finds that on February 21, 1973, the Defendants, Carl M. Blalock and Lynn C. Blalock, executed and

delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$11,000.00, payable in monthly installments, with interest thereon at the rate of 4.5 percent (4.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Carl M. Blalock and Lynn C. Blalock, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 21, 1973, covering the above-described property. Said mortgage was recorded on February 22, 1973, in Book 4056, Page 1559, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Carl M. Blalock and Lynn C. Blalock a/k/a Lynn Blalock Johnson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Carl M. Blalock and Lynn C. Blalock a/k/a Lynn Blalock Johnson, are indebted to the Plaintiff in the principal sum of \$7,112.45, plus interest at the rate of 4.5 percent per annum from October 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$259.70 (\$20.00 docket fees, \$6.40 fees for service of Summons and Complaint, \$233.30 publication fees).

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$201.00, plus penalties and interest, for the year of 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title or interest in the subject real property.

The Court further finds that the Defendant, Tulsa Urban Renewal Authority now known as Tulsa Development Authority, has a lien on the property which is the subject matter of this action by virtue of a mortgage recorded on April 25, 1986 in Book 4938 at Page 820 of the Tulsa County Records in the amount of \$6,500.00 together with interest of 10% per annum from October 1, 1988, until paid, together with a reasonable sum of attorney's fee and the costs expended to time of trial. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Carl M. Blalock and Lynn C. Blalock a/k/a Lynn Blalock Johnson, in the principal sum of \$7,112.45, plus interest at the rate of 4.5 percent per annum from October 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action in the amount of \$259.70 (\$20.00 docket fees, \$6.40 fees for service of Summons

and Complaint, \$233.30 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$201.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Tulsa Urban Renewal Authority, now known as Tulsa Development Authority, have and recover judgment in the amount of \$6,500.00, plus interest, costs, and reasonable attorney fees.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, has no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Carl M. Blalock and Lynn C. Blalock a/k/a Lynn Blalock Johnson, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the

Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$201.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of the Defendant, Tulsa Urban Renewal Authority, now known as Tulsa Development Authority, in the amount of \$6,500.00 plus attorney fees, interest and costs.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

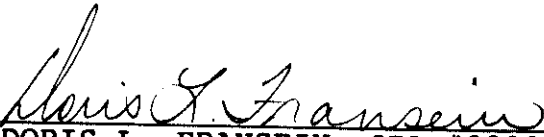
TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma



DORIS L. FRANSEIN, OBA #3000
Attorney for Tulsa Urban Renewal Authority,
now known as Tulsa Development Authority

Judgment of Foreclosure
Civil Action No. 89-C-999-B

PP/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DOYLE WAYNE AVERETT; NANCY LEA
AVERETT; CHARLES L. HOLLAND;
SHARON R. HOLLAND; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

F I L E D

AUG 31 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-1010-B

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 31 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; and the Defendants, Doyle Wayne
Averett, Nancy Lea Averett, Charles L. Holland and Sharon R.
Holland, appear not, but make default.

The Court being fully advised and having examined the
court file finds that the Defendant, Tulsa County Treasurer,
Tulsa County, Oklahoma, acknowledged receipt of Summons and
Complaint on December 11, 1989; and that Defendant, Board of
County Commissioners, Tulsa County, Oklahoma, acknowledged
receipt of Summons and Complaint on December 12, 1989.

The Court further finds that the Defendants, Doyle Wayne Averett, Nancy Lea Averett, Charles L. Holland and Sharon R. Holland, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 31, 1990, and continuing to July 5, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Doyle Wayne Averett, Nancy Lea Averett, Charles L. Holland and Sharon R. Holland, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Doyle Wayne Averett, Nancy Lea Averett, Charles L. Holland and Sharon R. Holland. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United

States Attorney for the Northern District of Oklahoma, through Peter Bernhardt, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on December 26, 1989; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on December 26, 1989; and that the Defendants, Doyle Wayne Averett, Nancy Lea Averett, Charles L. Holland and Sharon R. Holland, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Two (2), Block Two (2), CANDLESTICK BEACH
THIRD ADDITION, Tulsa County, State of
Oklahoma, according to the recorded plat
thereof.

The Court further finds that on December 17, 1982, the Defendants, Doyle Wayne Averett and Nancy Lea Averett, executed and delivered to the United States of America, acting on behalf

of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$55,000.00, payable in monthly installments, with interest thereon at the rate of 12 percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Doyle Wayne Averett and Nancy Lea Averett, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated December 17, 1982, covering the above-described property. Said mortgage was recorded on December 20, 1982, in Book 4657, Page 912, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Doyle Wayne Averett and Nancy Lea Averett, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Doyle Wayne Averett and Nancy Lea Averett, are indebted to the Plaintiff in the principal sum of \$57,395.47, plus interest at the rate of 12 percent per annum from April 1, 1986 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$250.54 (\$20.00 docket fees, \$1.44 fees for service of Summons and Complaint, \$229.10 publication fees).

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property

which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$519.00, plus penalties and interest, for the year of 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendants, Charles L. Holland, Sharon R. Holland, and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Doyle Wayne Averett and Nancy Lea Averett, in the principal sum of \$57,395.47, plus interest at the rate of 12 percent per annum from April 1, 1986 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action in the amount of \$250.54 (\$20.00 docket fees, \$1.44 fees for service of Summons and Complaint, \$229.10 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$519.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Charles L. Holland, Sharon R. Holland, and Board of County Commissioners, County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Doyle Wayne Averett and Nancy Lea Averett, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$519.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered
herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that
from and after the sale of the above-described real property,
under and by virtue of this judgment and decree, all of the
Defendants and all persons claiming under them since the filing
of the Complaint, be and they are forever barred and foreclosed
of any right, title, interest or claim in or to the subject real
property or any part thereof.

APPROVED:

TONY M. GRAHAM
United States Attorney

PETER BERNHARDT, OBA #741
Assistant United States Attorney
3600 U.S. Courthouse
Tulsa, Oklahoma 74103
(918) 581-7463

J. DENNIS SEMLER
J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Judgment of Foreclosure
Civil Action No. 89-C-1010-B

PB/esr

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 31 1990

TIMOTHY C. BARNETT,

Plaintiff,

vs.

DAVID HOSTETER and CATHY BRIDGES,

Defendant.

**Jack C. Silver, Clerk
U. S. DISTRICT COURT**

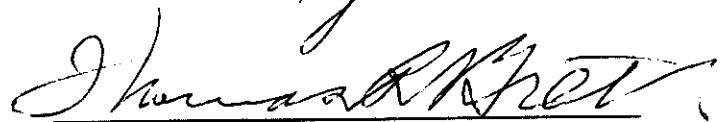
No. 89-C-404-B

ORDER

Plaintiff's letter, received by the Court on August 27, 1990, has been filed as a Motion to Dismiss his Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 as to Defendant David Hosteter. Plaintiff also asks the Court to dismiss his case against the Defendant David Hosteter for the stated valid reason.

Plaintiff's Civil Rights Complaint Pursuant to 42 U.S.C. § 1983 is dismissed with prejudice as to the Defendant David Hosteter.

IT IS SO ORDERED this 31 day of Aug, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
JUL 19 1990
J. C. SNIDER, Clerk
U.S. DISTRICT COURT

ASSOCIATES COMMERCIAL CORPORATION,
a Delaware corporation,

Plaintiff,

vs.

KROBLIN REFRIGERATED XPRESS, INC.,
an Iowa corporation,

Defendant.

Case No. 90 C-449 B

STIPULATION ^{OF} FOR DISMISSAL WITHOUT PREJUDICE

IT IS HEREBY STIPULATED by ASSOCIATES COMMERCIAL CORPORATION,
Plaintiff, and KROBLIN REFRIGERATED XPRESS, INC., Defendant, that
the above-entitled action be dismissed without prejudice, with each
party to bear its own attorney's fees and costs.

HANSON, HOLMES, FIELD & SNIDER

BY: Stewart E. Field
Stewart E. Field, OBA #2891
5918 East 31st Street
Tulsa, Oklahoma 74135
(918) 627-4400

Attorneys for Plaintiff

BAKER, HOSTER, McSPADDEN, CLARK,
RASURE & SLICKER

BY: Neal Tomlins
Neal Tomlins
800 Kennedy Building
Tulsa, Oklahoma 74103
(918) 592-5555

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 29 1990

JAMES W. HARVILL,
Plaintiff,

Jack C. Silver, Clerk
U.S. DISTRICT COURT

vs.

No. 89-C-361-E

THE SECRETARY OF HEALTH
AND HUMAN SERVICES OF THE
UNITED STATES OF AMERICA,

Defendant.

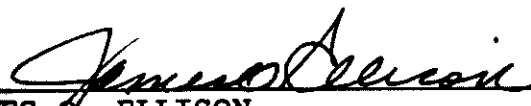
TIME STUDY CASE
) Record Time Spent by Judge or Magistrate

AMENDED ORDER

The Court has for consideration the Report and Recommendation of the Magistrate. After careful consideration of the record and the issues, including the briefs and memoranda filed herein by the parties, the Court has concluded that the Report and Recommendation of the Magistrate should be and hereby are adopted by the Court.

IT IS THEREFORE ORDERED that the case is remanded for consideration by a vocational expert to ascertain if an individual with Plaintiff's type of physical limitation, personality disorder, age, education and training can maintain employment in any job that exists in the national economy.

ORDERED this 29th day of August, 1990.


JAMES G. ELLISON
UNITED STATES DISTRICT JUDGE

A Gillespie only

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

GERALD R. MATULIS, an
individual; MARILYN MATULIS,
an individual; MILDRED GRAHAM
ESTATE by Gerald R. Matulis,
Personal Representative; and
RONALD R. McBROOM, an
individual,

Plaintiffs,

v.

Case No. 90-C-566-C

A. B. CULBERTSON & COMPANY,
a Texas corporation;
TRUST MANAGEMENT, INC., a
Texas corporation;
WILLIAM R. SARSGARD, an
individual;
CHARLES E. MARTIN, an
individual;
DEE S. FINLEY, JR., an
individual;
FRANK G. DUNHAM, JR., an
individual;
STANLEY GRANER, an individual;
LEONARD H. BRANTLEY, an
individual;
W. DELORES MEFFORD, an
individual;
J. MICHAEL MARCUM, an
individual;

Defendants.

Notice of
DISMISSAL WITHOUT PREJUDICE

COME NOW Plaintiffs Gerald R. Matulis and Ronald R. McBroom
and hereby Dismiss Without Prejudice to further action their
Complaint against the Defendant Clark B. Gillespie for the reason

the Plaintiffs have learned his health will not allow him to participate in this litigation.

Respectfully submitted,

HOUSTON AND KLEIN, INC.

By: 

Ira L. Edwards, Jr.
David W. Wulfers

320 South Boston, Suite 700
Tulsa, Oklahoma 74103
(918) 583-2131

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF MAILING

I hereby certify that on this 29 day of August, 1990, a true, correct and exact copy of the above and foregoing document was mailed with the proper postage thereupon fully prepaid to:

J. Michael Medina
Holliman, Langholz, Runnels
& Dorwart
Suite 700 Holarud Building
Ten East Third Street
Tulsa, Oklahoma 74103

B. Frank Cain
Janie Frank
David P. Cotten
Shannon, Gracey, Ratliff
& Miller
2200 First City Bank Tower
201 Main Street
Fort Worth, Texas 76102-9990



DAVID W. WULFERS

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JEFFERY L. WILKERSON; PAULA D.
WILKERSON; COUNTY TREASURER,
Creek County, Oklahoma;
BOARD OF COUNTY COMMISSIONERS,
Creek County, Oklahoma; and
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION,

Defendants.

F I L E D

AUG 29 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-1022-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 29 day
of Aug, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Creek County,
Oklahoma, and Board of County Commissioners, Creek County,
Oklahoma, appear by Wesley R. Thompson, Assistant District
Attorney, Creek County, Oklahoma; the Defendant, State of
Oklahoma ex rel. Oklahoma Tax Commission, appears by its attorney
Lisa Haws, and the Defendants, Jeffery L. Wilkerson and Paula D.
Wilkerson, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, State of Oklahoma ex rel.
Oklahoma Tax Commission, acknowledged receipt of Summons and
Amended Complaint on February 23, 1990; that Defendant, County
Treasurer, Creek County, Oklahoma, acknowledged receipt of
Summons and Complaint on December 11, 1989; and that Defendant,

Board of County Commissioners, Creek County, Oklahoma, acknowledged receipt of Summons and Complaint on December 11, 1989.

The Court further finds that the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, were served by publishing notice of this action in the Sapulpa Legal News, a newspaper of general circulation in Creek County, Oklahoma, once a week for six (6) consecutive weeks beginning April 5, 1990, and continuing through May 10, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United

States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on December 28, 1989; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on March 8, 1990; and that the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Five (5), Block One (1), PLEASANT VIEW, an addition to the City of Sapulpa, CREEK County, State of Oklahoma, according to the recorded Plat thereof.

The Court further finds that on September 4, 1987, the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, executed

and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$37,080.00, payable in monthly installments, with interest thereon at the rate of ten percent (10%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated September 4, 1987, covering the above-described property. Said mortgage was recorded on September 9, 1987, in Book 225, Page 1875, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, are indebted to the Plaintiff in the principal sum of \$36,788.19, plus interest at the rate of 10 percent per annum from October 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$205.10 (\$20.00 docket fees, \$177.10 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County,

Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$437.24, plus penalties and interest, for the year 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue Income Tax Warrant No. ITI8901823800 dated September 29, 1989, in the amount of \$334.47, plus interest and penalty according to law. Said lien is inferior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Jeffery L. Wilkerson and Paula D. Wilkerson, in the principal sum of \$36,788.19, plus interest at the rate of 10 percent per annum from October 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.92 percent per annum until paid, plus the costs of this action in the amount of \$205.10 (\$20.00 docket fees, \$177.10 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have and recover judgment in the amount

of \$437.24, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in rem in the amount of \$334.47, plus interest and penalty according to law, by virtue of Income Tax Warrant No. ITI8901823800 dated September 29, 1989.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, in the amount of \$437.24, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of Defendant, State of Oklahoma
ex rel. Oklahoma Tax Commission, in the
amount of \$334.47, plus interest and penalty
according to law.

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

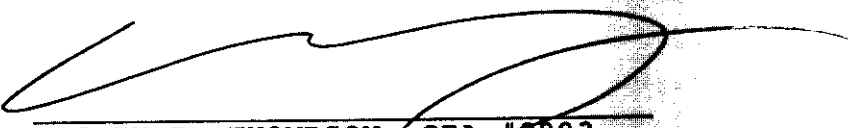
S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


WESLEY R. THOMPSON OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Lisa Haws
LISA HAWS, OBA #12695
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 89-C-1022-E

NNB/css

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

ANDERMAN/SMITH OPERATING COMPANY,

Plaintiff,

v.

ANR PIPELINE COMPANY,
a corporation,

Defendant.

No. 89-C-262-B

F I L E D

AUG 29 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

O R D E R

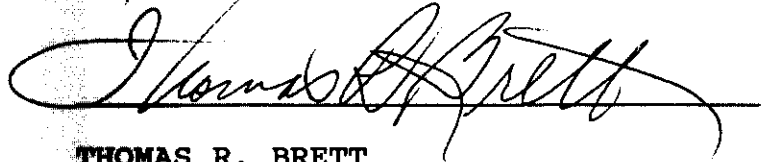
Before the Court is Plaintiff's Motion to Dismiss for Lack of Subject Matter Jurisdiction. Upon thorough review of the briefs, the Court finds that St. Mary's Land Company ("St. Mary's") is a real party in interest and should be joined in this action. Because joinder of St. Mary's would destroy diversity, the Court further finds that it is without subject matter jurisdiction to hear this action.

The Court has been advised that this action has been refiled against the same defendant with additional plaintiffs including St. Mary's in the District Court of Beckham County in the State of Oklahoma.¹ Court concludes for purposes of judicial economy that the action should proceed in the District Court of Beckham County.

¹ On the morning of August 29, 1990, Judge Charles B. Goodwin of the District Court of Beckham County in the State of Oklahoma spoke with the Court by telephone advising of the existence of said case, Anderman & Company, et al. v. ANR Pipeline Company, C-90-180, being filed in Beckham County and suggested to the Court that as a matter of judicial economy, said action should not proceed in both federal and state court.

And for said reason, Plaintiff's Motion to Dismiss without prejudice is hereby sustained.

IT IS SO ORDERED, this 29th day of August, 1990.

A handwritten signature in cursive script, reading "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FLYNN ENERGY CORPORATION,

Plaintiff,

vs.

No. 86-C-163-B

TULSA COMMERCE BANCSHARES, INC.,
BANK OF COMMERCE AND TRUST CO.,
LEE I. LEVINSON, DALE E. MITCHELL,
SIG KOHNEN, MCorp AND FEDERAL
DEPOSIT INSURANCE CORP., as Receiver
of MBANK DALLAS, NATIONAL ASS'N.

Defendants.

AUG 29 1990
U.S. DISTRICT COURT

ORDER

As the plaintiff was not present or represented at the scheduled pretrial hearing on the motions before the Court on August 16, 1990, the Court hereby dismisses *sua sponte* the action against all remaining defendants due to failure to prosecute in accordance with Rule 41(b) of the Federal Rules of Civil Procedure.

IT IS SO ORDERED, this 29th day of August, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 28 1990

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LEONA SAWYER, as Personal Representative
of the Estate of Johnnie Curtis Sawyer,
Deceased, and on her own behalf,

Plaintiff,

vs.

No. 88-C-444-E


BOARD OF COUNTY COMMISSIONERS OF
THE COUNTY OF CREEK, a subdivision
of the State of Oklahoma, et al.,

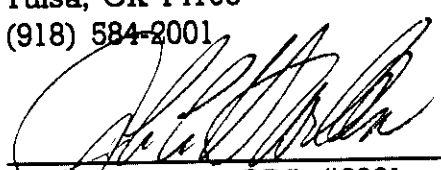
Defendants.

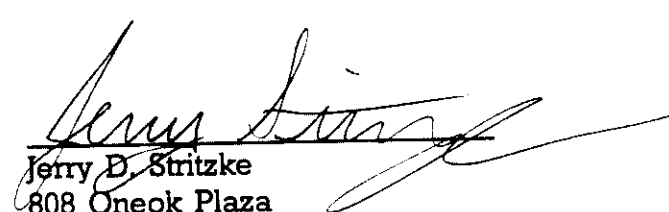
STIPULATION OF DISMISSAL

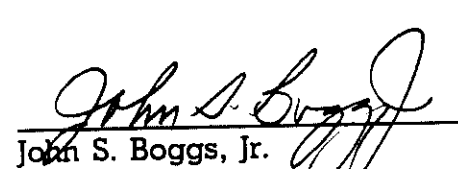
Pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, the Plaintiff has sought the stipulation of the parties to the dismissal of J.A. NUNEZ, M.D., such dismissal to be with prejudice.

It is therefore stipulated that J.A. NUNEZ is hereby dismissed with prejudice.


Louis W. Bullock, OBA #1305
Bullock & Bullock
320 South Boston, Suite 718
Tulsa, OK 74103
(918) 584-2001


John L. Harlan, OBA #3861
404 East Dewey Street
Suite 106
Sapulpa, OK 74066
(918) 227-2590


Jerry D. Stritzke
808 Oneok Plaza
100 West Fifth Street
Tulsa, OK 74103


John S. Boggs, Jr.
Assistant District Attorney
Osage County Courthouse
Pawhuska, OK 74056



Lantz McClain
District Attorney
Creek County Courthouse
Sapulpa, OK 74066

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1990

JACK SILVER, CLERK
U.S. DISTRICT COURT

FLYNN ENERGY CORP., by &
through Don M. Flynn and J.
Jerry Dickman,

Plaintiffs,

vs.

No. 86-C-163-B

TULSA COMMERCE BANCSHARES,
INC., et al,

Defendants.

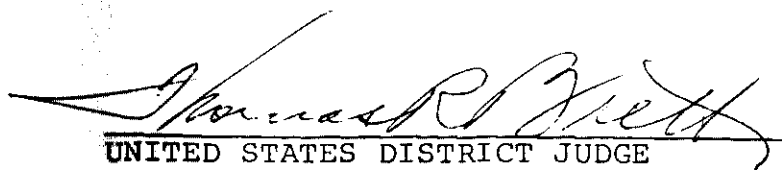
ADMINISTRATIVE CLOSING ORDER

MCORP and Dale E. Mitchell

The Defendants/having filed its petition in bankruptcy and these proceeding being stayed thereby, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

IF, within 60 days of a final adjudication of the bankruptcy proceedings, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED this 28th day of AUGUST, 19 90


UNITED STATES DISTRICT JUDGE
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

HOMEWARD BOUND, INC.,
et al.,

Plaintiffs,

vs.

THE HISSOM MEMORIAL CENTER,
et al.,

Defendants.

Case No. 88-C-437-E

JUDGMENT

In accordance with the Order entered on this 27 day of August 1990, awarding Plaintiffs' counsel, Bullock and Bullock, interim base attorney fees and expenses, the Court hereby enters judgment in favor of Plaintiffs' counsel, Bullock & Bullock, in the amount of \$ 71,995.00 for base fees and \$ 6,657.84 for expenses. Plaintiffs' right to an enhancement of these fees shall be held in abeyance until the matter of Plaintiffs' right to enhancement is resolved.

Ordered this 27 day of August 1990.

S/ JAMES O. ELLISON

JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1990

JEAN M. BARBER, et al.,

Plaintiffs,

vs.

SALLY J. BARNETT,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-229-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 28th day of August, 1990.


JAMES C. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1990

JAMES PACK,

Plaintiff,

v.

DR. BARNES, TULSA COUNTY JAIL,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

90-C-358-C


ORDER

The court has for consideration the Report and Recommendation of the Magistrate filed on August 3, 1990, in which the Magistrate recommended that the defendant's Motion to Dismiss be granted on the grounds that res judicata bars the present suit. No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the court has concluded that the Report and Recommendation of the Magistrate should be and hereby is affirmed.

It is therefore Ordered that the defendant's Motion to Dismiss is granted.

Dated this 28th day of August, 1990.


H. DALE COOK
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1990

BRUNSWICK CORPORATION,

Plaintiff,

vs.

SPINIT REEL COMPANY, et al.,

Defendants.

No. 84-C-233-E


Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has ordered that this case remain in abeyance until final judgment is entered in case number 83-C-253-E. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown.

ORDERED this 28th day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

MRS. DAVID E. COON,
ON BEHALF OF TOMMY COON,
DAVID E. COON, JR.,
JERYE LYN DYER, EDWARD D. COON
JAMES R. COON,

Plaintiffs,

vs.

INGERSOLL-RAND CO.,
INGERSOLL-RAND OIL FIELD
PRODUCTS CO., IRI INTERNATIONAL CO.,

Defendants.

Joe C. Silver, Clerk
U.S. DISTRICT COURT

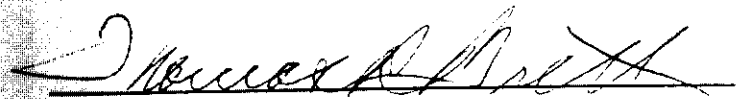
No. 89-C-194-B

ORDER

Before the Court for decision is Plaintiffs' Application for Dismissal Without Prejudice. In the process of discovery, plaintiffs identified parties to be joined as defendants whose joinder would destroy diversity jurisdiction. Plaintiffs, therefore, request dismissal in order to refile the action in state court.

As the plaintiffs have stipulated that all completed discovery may be used in any subsequently filed case, the Court denies the defendants' request for attorneys' fees and grants Plaintiff's Motion to Dismiss Without Prejudice.

IT IS SO ORDERED, this 28 day of August, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ASHLEY'S RESTAURANT, INC.;
MOHAMAD ALI DJAHEDIAN,
individually; JOYCE A.
DJAHEDIAN, individually;
ANDERSON DEVELOPMENT COMPANY,
an Oklahoma Corporation,

Defendants.

CIVIL ACTION NO. 89-C-266-B

AGREED JOURNAL ENTRY OF JUDGMENT

This matter comes on for consideration this 28 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, Mohamad Ali Djahedian and Joyce A.
Djahedian, appear by their attorney David A. Tracy; the
Defendant, Anderson Development Company, appears by its attorney
Philip McGowan; and the Defendant, Ashley's Restaurant, Inc.,
appears by its attorney, Thomas B. Baines.

The Court being fully advised and having examined the
file herein finds that the Defendant, Anderson Development
Company, acknowledged receipt of Summons and Complaint on
April 12, 1989.

It appears that the Defendants, Ashley's Restaurant,
Inc., Mohamad Ali Djahedian and Joyce A. Djahedian, filed their
Answer on April 24, 1989; and that the Defendant, Anderson

Development Company, filed its Answer on May 8, 1989. Defendant, Ashley's Restaurant, Inc., agrees to judgment as hereinafter ordered.

The Court further finds that on August 3, 1988, Mohamad Ali Djahedian and Joyce A. Djahedian filed their Petition under Chapter 7 of the Bankruptcy Code, and that the stay was lifted by the bankruptcy court on November 29, 1988.

The Court further finds that on the 20th day of March, 1987, at Broken Arrow, Oklahoma, Defendant, Ashley's Restaurant, Inc. by M. Ali Djahedian, its President, for value received, made, executed and delivered to Metro Bank of Broken Arrow (hereinafter "Bank"), its certain promissory note in the principal amount of \$57,000.00, with interest from date at the rate of 9.75 percent per annum on the unpaid balance until paid. The principal and interest were payable in monthly installments of \$1,205.00 commencing on the 20th day of April, 1987, and monthly thereafter until paid. Said promissory note was transferred and assigned to the Small Business Administration an , Agency and instrumentality of the United States Government (hereinafter "SBA") on February 3, 1988.

The Court further finds that as part and parcel of the same transaction and for the purpose of securing the payment of the aforesaid promissory note, M. Ali Djahedian and Joyce A. Djahedian, on March 20, 1987, individually executed and delivered to the Bank, their Guaranties.

The Court further finds that on or about March 20, 1987, as collateral security for payment of the aforesaid note,

the Defendant, Ashley's Restaurant, Inc., executed and delivered to the Bank, three Security Agreements thereby creating in favor of Bank a security interest in its inventory, contract right, certain machinery and equipment, furniture and fixtures, then owned or thereafter acquired, more particularly described therein. Copies of said Security Agreements were attached to the Complaint as Exhibits "D", "E," and "F." The security interest of the Bank in said personal property was perfected by filing of Financing Statements:

(1) With the County Clerk of Tulsa County, Oklahoma, on April 22, 1987, under file number 567127, assigned to SBA by Assignment filed under number 567127 on May 18, 1988;

(2) With the County Clerk of Oklahoma County, Oklahoma, on April 22, 1987, under file number 027168, assigned to SBA by Assignment filed under number 000505 on May 18, 1988; and

(3) Covering fixtures, filed under number 589031 on April 22, 1987, with the County Clerk of Tulsa County and recorded in Book 5617 at Page 2035, assigned to SBA by Assignment filed under number 703754 on May 18, 1988, and recorded in Book 5100 at Page 1377.

The Court further finds that Plaintiff has the first lien on such personal property, except as set forth in paragraph 2 on page 4 of this Agreed Journal Entry of Judgment.

The Court further finds that the Defendants, Ashley's Restaurant, Inc., Mohamad Ali Djahedian and Joyce A. Djahedian, have failed to make the installment payments as they have come due under the terms of the note, guaranties and security agreements.

The Court further finds that Plaintiff has demanded of Defendants, Ashley's Restaurant, Inc., Mohamad Ali Djahedian and Joyce A. Djahedian, that they pay the same and they have failed, refused and neglected to do so. Therefore, pursuant to the provisions of said instruments, Plaintiff, having met each and every duty thereunder and having satisfied each and every regulatory condition precedent has now exercised the option of said instruments and declared the entire outstanding balance of the indebtedness and interest due and payable immediately. Defendants, Ashley's Restaurant, Inc., Mohamad Ali Djahedian and Joyce A. Djahedian, are indebted to the Plaintiff in the principal sum, including advances made pursuant to the note, guaranties, and security agreements, of \$53,875.56, together with accrued interest of \$7,270.99 as of the 8th day of February, 1989, with interest thereafter accruing at the daily rate of \$16.24.

The Court further finds that the Defendant, Anderson Development Company, has a prior and superior interest in and to the following described personal property which is the subject of this action, which property was located on the business premises leased by Defendant, Anderson Development Company, to Ashley's Restaurant, Inc. as of the date of the lease, and which property is owned by the Defendant, Anderson Development Company.

Refrigerator (3 X 2); freezer (3 X 2); bar backs; counters; blender; soft drink dispenser system; 3 trash cans; flower (rose) picture; 2 godfather pictures; glass etchings; wine rack; back counter; glass shelving; 76 pieces glassware; 7 bar counter chairs; 11 chairs (lounge); mirror (fireplace); picture (piano); 2 shadow screens; carpet (total); 300 plates

(Italian style); reach-in refrigerator; 2 microwave ovens; 2 burner stove; 4 burner stove; 5 ceiling fans; window coverings (blinds); curtains; couch; time clock; shelving (kitchen); bread warmer; Ansel system; 5 dish racks; 22 dish racks; track lighting; stereo system; deacons bench (blue cover); 2 coat racks; wine rack; smoke alarms; mirror (ladies room sign); mirror (men's room sign); bathroom fixtures; vanity lighting (rest rooms); Cappuccino machine; finished oak hostess stand; dishwasher machine; vent; old cooking utensils; walk-in freezer; and walk-in cooler.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in personam against the Defendant, Ashley's Restaurant, Inc., and in rem against the Defendants, Mohamad Ali Djahedian and Joyce A. Djahedian, in the principal sum of \$53,875.56, together with accrued interest of \$7,270.99 as of the 8th day of February, 1989, with interest thereafter accruing at the daily rate of \$16.24, until judgment and thereafter at the current legal rate of 7.95 percent per annum until paid and the costs of this action accrued and accruing; and for immediate possession and delivery of the personal property described in the Complaint, less and except the personal property described in paragraph 2 on page 4 of this Agreed Journal Entry of Judgment.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell without appraisal the personal property described in the Complaint and its exhibits, less and except the personal property described in paragraph 2 on page 4 of this Agreed Journal Entry of Judgment, and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

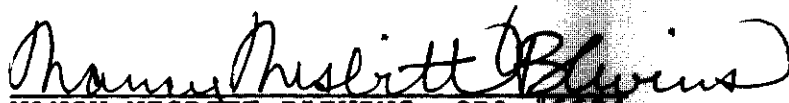
The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

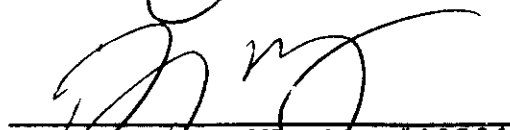
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described personal property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to such personal property or any part thereof.

S/ THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE


APPROVED:

TONY M. GRAHAM
United States Attorney



NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


DAVID A. TRACY, OBA #10501
Attorney for Defendants,

Mohamad Ali Djahedian and Joyce A. Djahedian


PHILIP MCGOWAN, OBA #
Attorney for Defendant,
Anderson Development Company

Agreed Journal Entry of Judgment
Civil Action No. 89-C-266-B


THOMAS B. BAINES, OBA #10022
Attorney for Defendant,
Ashley's Restaurant, Inc.

GLA/LAL/ta
08/15/90

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 28 1990

IN RE: ASBESTOS LITIGATION

JACK C. SILVER, CLERK
) Master # 14017 DISTRICT COURT
)
) ASB - TW # 4252

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CHARLES RAYMOND CHANEY, et al.,
EARL MORRIS OLEMAN, et al.,
GEORGE GRANT HELTON, et al.,
CLINTON BERNICE DITMORE, et al.,
SANFORD MARION BOWEN, JR., et al.,

) No. 88-C-724-E
) No. 88-C-744-B
) No. 88-C-745-E
) No. 88-C-751-E
) No. 88-C-772-C

LARRY EUGENE STOGSDILL, et al.,
PATRICK W. PERRY, et al.,
JOE MONROE BERRY, et al.,
BUDDY EUGENE JONES, et al.,
MARVIN EUGENE BEEHLER, et al.,
JUNIOR LEROY MASHBURN, et al.,
LELAND WEBSTER KAHLER, et al.,

) No. 88-C-715-E
) No. 88-C-719-E
) No. 88-C-784-C
) No. 88-C-790-C
) No. 88-C-797-E
) No. 88-C-798-B
) No. 88-C-807-B

BRENDA GAY ANDREWS, et al.,
RICHARD WARD WARNER, et al.,
MERVIN LEE EAST, et al.,
RICHARD KEITH HUNT, et al.,
G. D. KASTEN, et al.,

) No. 88-C-808-E
) No. 88-C-814-E
) No. 88-C-824-E
) No. 88-C-843-B
) No. 88-C-836-B

W. D. HOPPER, et al.,
BOBBIE JOE HULSEY, et al.,
JACK J. PHILLIPS, et al.,
EVA F. McCOIN,
VERNA BRADEN,

) No. 88-C-841-E
) No. 88-C-848-C
) No. 88-C-888-B
) No. 88-C-890-E
) No. 88-C-905-B

CHARLES PAUL SILL, et al.,
DONALD E. ELSTEN, et al.,
HEDY MARIE MASTERSON,

) No. 88-C-698-E
) No. 88-C-705-E
) No. 88-C-906-B

JOSEPH M. BRADY, et al.,
ROY ALVIN EAST, et al.,
TRELLA B. FISHER,

) No. 88-C-937-B
) No. 88-C-941-C
) No. 88-C-944-E

ORDER OF DISMISSAL

4252

) No. 88-C-948-E
) No. 88-C-950-B
) No. 88-C-960-C
) No. 88-C-969-C
) No. 88-C-978-E

) No. 88-C-980-B
) No. 88-C-994-B
) No. 88-C-1007-E
) No. 88-C-1008-C
) No. 88-C-1032-E

) No. 88-C-1050-E
) No. 88-C-1082-E
) No. 88-C-1113-E
) No. 88-C-1139-B
) No. 88-C-1201-B

) No. 88-C-1272-B
) No. 88-C-1394-E
) No. 88-C-1410-C

) No. 89-C-162-B

) No. 88-C-709-C
) No. 88-C-706-C

ORDER OF DISMISSAL

This matter comes on for hearing the 24th day of August, 1990, and after considering pleadings of parties, it is hereby Ordered that the Defendant R. T. Vanderbilt Company, Inc., shall be dismissed without prejudice from the above-referenced matter(s). Each party is to bear their/its own costs.

Dated this 24th day of August, 1990.

W. J. L. Hook
U.S. DISTRICT COURT JUDGE

APPROVED AS TO FORM:

NORMAN & EDEM
ATTORNEYS FOR PLAINTIFFS

James E. Norman
Thomas E. Edem

By: G. Hendryx

GINA L. HENDRYX - OBA #10330
JAMES M. HAYS, III - OBA #4016
JOHN W. NORMAN - OBA #6699
DONNA L. ARNOLD - OBA #013649
Renaissance Centre East
127 N.W. 10th
Oklahoma City, OK 73103-4903
405-272-0200 (O)
405-235-2949 (F)

LAW OFFICES OF DONALD G. HOPKINS
ATTORNEYS FOR DEFENDANT R. T. VANDERBILT COMPANY, INC.

By: Donald G. Hopkins

DONALD G. HOPKINS
4606 S. Garnett, Suite 306
Tulsa, OK 74146
918-622-6613 (O)
918-622-6614 (F)

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 28 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GARY B. MILLION; COUNTY
TREASURER, Creek County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Creek County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 89-C-846-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day
of Aug, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Creek County,
Oklahoma, and Board of County Commissioners, Creek County,
Oklahoma, appear not, having previously filed their Disclaimer;
and the Defendant, Gary B. Million, appears not, but makes
default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Gary B. Million, was served
with Summons and Complaint on July 10, 1990; that the Defendant,
County Treasurer, Creek County, Oklahoma, acknowledged receipt of
Summons and Complaint on October 16, 1989; and that Defendant,
Board of County Commissioners, Creek County, Oklahoma,
acknowledged receipt of Summons and Complaint on October 12,
1989.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Disclaimer on October 18, 1989; that the Defendant, Gary B. Million, has failed to answer and his default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Eleven (11), Block Six (6), Southern Heights Addition to Sapulpa, Creek County, State of Oklahoma, and Lots One (1), Two (2), Three (3), Block Seven (7), Southern Heights Addition to Sapulpa, Creek County, State of Oklahoma.

The Court further finds that on February 17, 1983, the Defendant, Gary B. Million, executed and delivered to The American National Bank and Trust Company of Sapulpa, Oklahoma, his mortgage note in the amount of \$27,150.00, payable in monthly installments, with interest thereon at the rate of twelve percent (12%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Gary B. Million, executed and delivered to The American National Bank and Trust Company of Sapulpa, Oklahoma, a mortgage dated February 17, 1983, covering the above-described property. Said mortgage was recorded on February 18, 1983, in Book 131, Page 1224, in the records of Creek County, Oklahoma.

The Court further finds that The American National Bank and Trust Company of Sapulpa, Oklahoma, assigned said mortgage to Alliance Mortgage Company. This Assignment of Real Estate Mortgage was recorded on February 23, 1983, in Book 131, Page 1672, in the records of Creek County, Oklahoma.

The Court further finds that on August 28, 1989, Alliance Mortgage Company assigned said mortgage to the Secretary of Veterans Affairs. This Assignment of Real Estate Mortgage was recorded on September 25, 1989, in Book 254, Page 378, in the records of Creek County, Oklahoma.

The Court further finds that the Defendant, Gary B. Million, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Gary B. Million, is indebted to the Plaintiff in the principal sum of \$26,586.82, plus interest at the rate of 12 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$35.60 (\$20.00 docket fees, \$7.60 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, disclaim any right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Gary B.

Million, in the principal sum of \$26,586.82, plus interest at the rate of 12 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action in the amount of \$35.60 (\$20.00 docket fees, \$7.60 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Gary B. Million, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in
favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the
Clerk of the Court to await further Order of the Court.

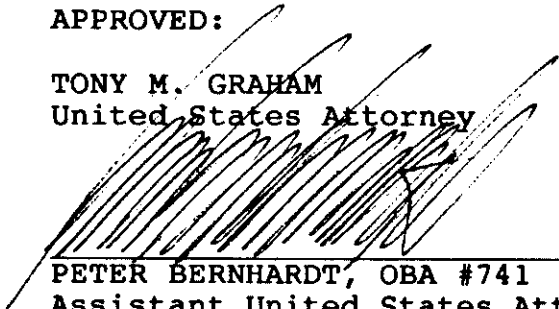
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from
and after the sale of the above-described real property, under
and by virtue of this judgment and decree, all of the Defendants
and all persons claiming under them since the filing of the
Complaint, be and they are forever barred and foreclosed of any
right, title, interest or claim in or to the subject real
property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PETER BERNHARDT, OBA #741
Assistant United States Attorney

Judgment of Foreclosure
Civil Action No. 89-C-846-E

PB/css

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 28 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONALD GARRETT,

Defendant.

No. 88-CR-114-E

90-C-406-E ✓


(original filed in
88-CR-114-E)

ORDER

NOW on this 28th day of August, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that Defendant has filed a motion pursuant to 28 U.S.C. §2255 in this case. Such motion is premature, as Defendant had not been sentenced at the time the motion was filed and in fact will not be sentenced until September 7, 1990. Accordingly the motion pursuant to 28 U.S.C. §2255 must be dismissed at this time, with leave granted for a subsequent refiling at the proper time.

IT IS THEREFORE ORDERED that the motion pursuant to 28 U.S.C. §2255 must be dismissed at this time, with leave granted for a subsequent refiling at the proper time.

ORDERED this 28th day of August, 1990.


JAMES S. ELLISON
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RONNIE L. BROWN a/k/a RONNIE
LEE BROWN; KAREN G. BROWN
a/k/a KAREN GAIL BROWN;
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION;
THE ROONEY COMPANY, an
Oklahoma Corporation, as agent
for MAXIM BUSINESS PARK, LTD.;
COUNTY TREASURER, Tulsa County;
and BOARD OF COUNTY COMMISSIONERS,
Tulsa County, Oklahoma,

Defendants.

FILED

AUG 28 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-470-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day
of Aug, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendant, Ronnie L. Brown a/k/a Ronnie Lee Brown appear by
Mr. Joseph Lapan, Esq.; Karen G. Brown a/k/a Karen Gail Brown
n/k/a Karen Gail Pryor appears by Edward P. Sullivan, Esq.; the
Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission
appears through Lisa Haws, Assistant General Counsel; the
Defendants, County Treasurer, Tulsa County, Oklahoma, and Board
of County Commissioners, Tulsa County, Oklahoma, appear by J.
Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; and the Defendant, The Rooney Company, an Oklahoma

Corporation, as agent for Maxim Business Park, Ltd., appears not, but makes default.

The Court being fully advised and having examined the file herein finds that the Defendant, Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, acknowledged receipt of Summons and Complaint on June 24, 1990; that Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission acknowledged receipt of Summons and Complaint on June 1, 1990; that Defendant, The Rooney Company, as agent for Maxim Business Park, Ltd., acknowledged receipt of Summons and Complaint on June 7, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 1, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on June 1, 1990.

It appears that the Defendant, Ronnie L. Brown a/k/a Ronnie Lee Brown, filed his Disclaimer on June 22, 1990; that the Defendant, Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, filed her Disclaimer on June 22, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on June 18, 1990; that the Defendant, County Treasurer, Tulsa County, Oklahoma, filed its Answer on June 21, 1990; that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, filed its Answer on June 21, 1990; and that the Defendant, The Rooney Company, an Oklahoma Corporation, as agent for Maxim Business Park, Ltd., has failed to answer and its default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract of land in the West Half of the Southwest Quarter (W/2 SW/4) of Section 26, Township 17 North, Range 14 East, of the Indian Base and Meridian, Tulsa County, State of Oklahoma, more particularly described as follows, to wit:

BEGINNING 1381.6 feet South and 349.76 feet West of the Northeast Corner of the W/2 SW/4;

THENCE West 245.76 feet;

THENCE North 250 feet;

THENCE East 246.38 feet;

THENCE South 250 feet to the POINT OF BEGINNING, containing 1.45 acres, more or less, according to the U.S. Government Survey thereof.

The Court further finds that on August 30, 1986, the Defendants, Ronnie L. Brown and Karen G. Brown, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$64,800.00, payable in monthly installments, with interest thereon at the rate of 9.5 percent (9.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Ronnie L. Brown and Karen G. Brown, executed and delivered to the United States of America, acting on behalf of the Administrator of

Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 30, 1986, covering the above-described property. Said mortgage was recorded on September 2, 1986, in Book 4966, Page 2002, in the records of Tulsa County, Oklahoma.

The Court further finds that the Plaintiff has learned that Karen G. Brown a/k/a Karen Gail Brown is now known as Karen Gail Pryor.

The Court further finds that the Defendants, Ronnie L. Brown a/k/a Ronnie Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Ronnie L. Brown a/k/a Ronnie Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, are indebted to the Plaintiff in the principal sum of \$63,478.50, plus interest at the rate of 9.5 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action accrued and accruing.

The Court further finds that the Defendants, Ronnie L. Brown a/k/a Ronnie Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, claim no right, title or interest in the subject real property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has a lien on the property which is the subject matter of this action by virtue of:

1) income tax Warrant No. ITI8601576100 against Karen Brown in the amount of \$327.64 plus interest and penalties, and 2) income tax Warrant No. ITI8701184300 against Karen Brown in the amount of \$724.76 plus interest and penalties.

The Court further finds that the Defendant, The Rooney Company, an Oklahoma Corporation, as agent for Maxim Business Park, Ltd., claims no right, title or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Ronnie L. Brown a/k/a Ronnie Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, in the principal sum of \$63,478.50, plus interest at the rate of 9.5 percent per annum from August 1, 1989 until judgment, plus interest thereafter at the current legal rate of 7.95 percent per annum until paid, plus the costs of this action accrued and accruing, plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Ronnie L. Brown a/k/a Ronnie Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, claim no

right, title or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ~~ex rel.~~ Oklahoma Tax Commission, have and recover judgment in the amount of \$1,052.40 plus interest and penalties.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, The Rooney Company, an Oklahoma Corporation, as agent for Maxim Business Park, Ltd., claims no right title or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Ronnie L. Brown a/k/a Ronnie Lee Brown and Karen G. Brown a/k/a Karen Gail Brown n/k/a Karen Gail Pryor, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

Third:

In payment of the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the amount of \$1,052.40 plus interest and penalties.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED:


TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



LISA HAWS, OBA #12,695
Assistant General Counsel


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney

Judgment of Foreclosure
Civil Action No. 90-C-470-E

PP/esr

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

BILLY L. THOMAS and LILA L.
THOMAS, husband and wife;
COUNTY TREASURER and BOARD OF
COUNTY COMMISSIONERS, Pawnee
County, Oklahoma,

Defendants.

CIVIL ACTION NO. 90-C-0067-B

JUL 11 1990
U.S. DISTRICT COURT

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 28 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Peter Bernhardt, Assistant United States
Attorney; the Defendants, County Treasurer, Pawnee County,
Oklahoma, and Board of County Commissioners, Pawnee County,
Oklahoma, appear by Lawrence A. Martin, Assistant District
Attorney, Pawnee County, Oklahoma; and the Defendants, Billy L.
Thomas and Lila L. Thomas, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendants, Billy L. Thomas and
Lila L. Thomas, were served with Summons and Complaint on June 6,
1990; that Defendant, County Treasurer, Pawnee County, Oklahoma,
acknowledged receipt of Summons and Complaint on February 6,
1990; and that Defendant, Board of County Commissioners, Pawnee
County, Oklahoma, acknowledged receipt of Summons and Complaint
on February 9, 1990.

It appears that the Defendants, County Treasurer, Pawnee County, Oklahoma, and Board of County Commissioners, Pawnee County, Oklahoma, filed their Answer on February 12, 1990; that the Defendants, Billy L. Thomas and Lila L. Thomas, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a mortgage and security agreement securing said promissory note upon the following described real property located in Pawnee County, Oklahoma, within the Northern Judicial District of Oklahoma:

A parcel of land located within the South-half (S/2) of the North-east Quarter (NE/4) of Lot Two (2) (aka NE/4 SW/4) of Section 35, T20N R7E IM and more particularly described as follows, to-wit: Beginning at the Southwest corner of said S/2 NE/4 Lot 2; thence North 150 feet; thence East 140 feet; thence South 150 feet; thence West 140 feet to the point of beginning containing 0.50 acres more or less. Less and Except all of the oil, gas and other minerals lying in and under and that may be produced therefrom.

The Court further finds that on July 17, 1984, the Defendants, Billy L. Thomas and Lila L. Thomas, executed and delivered to the United States of America, acting on behalf of the Small Business Administration, their promissory note in the amount of \$72,800.00, payable in monthly installments, with interest thereon at the rate of four percent (4%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Billy L. Thomas and Lila L. Thomas, executed and delivered to the United

States of America, acting on behalf of the Small Business Administration, a mortgage dated July 17, 1984, covering the above-described property. Said mortgage was recorded on July 17, 1984, in Book 345, Page 528, in the records of Pawnee County, Oklahoma.

The Court further finds that on or about July 17, 1984, as collateral security for payment of the aforesaid note, the Defendants, Billy L. Thomas and Lila L. Thomas, executed and delivered to Plaintiff, a certain Security Agreement thereby creating in favor of Plaintiff a security interest in "All personal property, now owned, hereafter acquired, and/or to be purchased in whole or in part from the proceeds of this loan, and the proceeds therefrom." The security interest of Plaintiff in said property was perfected by a Financing Statement filed with the County Clerk of Pawnee County, Oklahoma, on July 17, 1984, under file No. 862.

The Court further finds that the Defendants, Billy L. Thomas and Lila L. Thomas, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Billy L. Thomas and Lila L. Thomas, are indebted to the Plaintiff in the principal sum of \$55,023.68, together with accrued interest of \$6,263.15 as of the 26th day of July, 1989, with interest thereafter at the daily rate of \$6.03 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$46.24 (\$20.00 docket fees,

\$18.24 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Pawnee County, Oklahoma, have a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$281.60 for the year 1987, \$284.16 for the year 1988, \$293.04 for the year 1989, plus penalties and interest. Said lien is superior to the interest of the Plaintiff, United States of America.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against the Defendants, Billy L. Thomas and Lila L. Thomas, in the principal sum of \$55,023.68, together with accrued interest of \$6,263.15 as of the 26th day of July, 1989, with interest thereafter at the daily rate of \$6.03 until judgment, plus interest thereafter at the current legal rate of 7.75% percent per annum until paid, plus the costs of this action in the amount of \$46.24 (\$20.00 docket fees, \$18.24 fees for service of Summons and Complaint, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners, Pawnee County, Oklahoma, have and recover judgment for ad valorem taxes in the amounts of \$281.60 for the year 1987, \$284.16 for

the year 1988, and \$293.04 for the year 1989, plus penalties and interest, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendants, Billy L. Thomas and Lila L. Thomas, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property and personal property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real and personal property;

Second:

In payment of Defendants, County Treasurer and Board of County Commissioners, Pawnee County, Oklahoma, in the amount of \$858.80, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real and personal

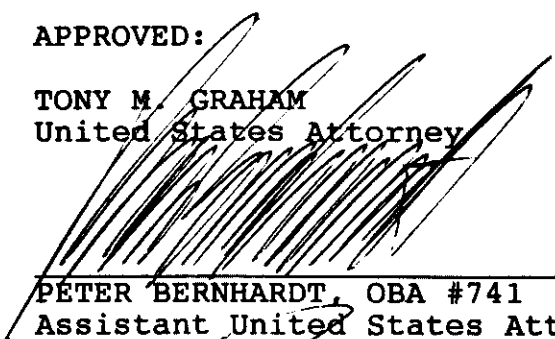
property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real and personal property or any part thereof.


S/ THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PETER BERNHARDT, OBA #741
Assistant United States Attorney


LAWRENCE A. MARTIN, OBA #5731
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Pawnee County, Oklahoma

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

TOWN & COUNTRY BANK, an Oklahoma
banking corporation,

Plaintiff,

vs.

Case No. 88-C-1523-C

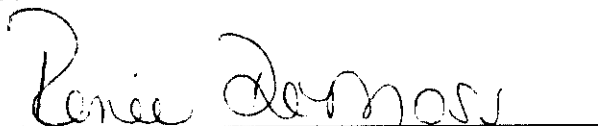
McCORKLE DEVELOPMENT CORPORATION,
an Oklahoma corporation; EARL L.
McCORKLE and VIRGINIA R. MCCORKLE

Defendants.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

COME NOW the Federal Deposit Insurance Corporation in its corporate capacity, as successor in interest to Town and Country Bank of Bixby, Oklahoma and its counsel Renée DeMoss of Gable & Gotwals, Inc. and McCorkle Development Corporation, Earl L. McCorkle and Virginia R. McCorkle, pursuant to Fed.R.Civ.P. 41(a)(1), and hereby dismiss all claims, counterclaims or cross-claims filed in this action with prejudice to the refiling of the same.

DATED this 13th day of August, 1990.



Renée DeMoss, OBA #10779
GABLE & GOTWALS, INC.
2000 Fourth National Bank Building
Tulsa, Oklahoma 74119-5447
(918) 582-9201
ATTORNEYS FOR PLAINTIFF



Ken Ray Underwood, OBA #9156
1777 South Boulder, Suite 800
Tulsa, Oklahoma 74119
(918) 592-2424
ATTORNEY FOR DEFENDANTS

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990 *JS*

JAMES PETER, et al.,
Plaintiffs,

vs.

UNITED STATES OF AMERICA,
Defendant.

No. 89-C-535-E
89-C-536-E ✓
89-C-537-E
89-C-538-E
(Consolidated)


Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24TH day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990

INDEPENDENT SCHOOL DISTRICT
NO. 2 (SAND SPRINGS, OF
TULSA COUNTY, OKLAHOMA,

Plaintiffs,

vs.

DEPARTMENT OF EDUCATION OF
THE STATE OF OKLAHOMA,
et al.,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 87-C-831-E

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown.

ORDERED this 24TH day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990

JAMES PETER, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 89-C-535-E ✓

89-C-536-E

89-C-537-E

89-C-538-E

(Consolidated)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24th day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

FILED
AUG 27 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FLYNN ENERGY CORP.,

Plaintiff,

VS.

NO. 86-C-163-B

TULSA COMMERCE BANCSHARES,
INC., BANK OF COMMERCE AND
TRUST COMPANY, LEE I.
LEVINSON, DALE E. MITCHELL,
SIG KOHNEN, MCorp and
FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER OF
MBANK DALLAS, NATIONAL
ASSOCIATION,

Defendants.

JUDGMENT

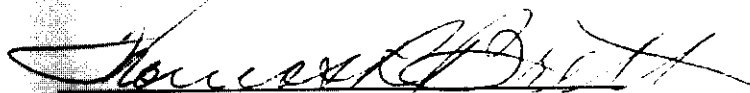
Be it remembered that on the 16th day of August, 1990, came on for consideration the Motion for Summary Judgment filed by Federal Deposit Insurance Corporation ("FDIC"), in its capacity as Receiver of MBank Dallas, National Association ("FDIC-Receiver"), Defendant herein, and the Court, by Order dated August 24, 1990, granted in its entirety, on the merits, FDIC-Receiver's Motion for Summary Judgment.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of FDIC-Receiver, and against Plaintiffs or their assignees and transferees, including J. Jerry Dickman and Don M. Flynn; that all causes of action against FDIC-Receiver by Plaintiff and/or the aforementioned assignees or transferees, including J. Jerry Dickman and Don M. Flynn, are

hereby dismissed with prejudice; and that Plaintiff and/or the
aforementioned assignees or transferees, including J. Jerry
Dickman and Don M. Flynn, recover nothing of and from
FDIC-Receiver.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all
costs of this proceeding are hereby assessed and adjudged against
Plaintiff Flynn Energy Corp. and in favor of FDIC-Receiver, as the
prevailing party herein, for which let execution lie, if
necessary.

SIGNED this 27th day of August, 1990.


HONORABLE THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990 *dt*

JAMES PETER, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 89-C-535-E

89-C-536-E

89-C-537-E ✓

89-C-538-E

(Consolidated)

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24th day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990

JAMES PETER, et al.,

Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Defendant.

No. 89-C-535-E

89-C-536-E

89-C-537-E

89-C-538-E ✓

(Consolidated)


Jack C. Silver, Clerk
U.S. DISTRICT COURT

ADMINISTRATIVE CLOSING ORDER

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore it is not necessary that the action remain upon the calendar of the Court.

IT IS THEREFORE ORDERED that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation, order, judgment, or for any other purpose required to obtain a final determination of the litigation. The Court retains complete jurisdiction to vacate this order and to reopen the action upon cause shown within thirty (30) days that settlement has not been completed and further litigation is necessary.

ORDERED this 24TH day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 25 1989

FEDERAL DEPOSIT INSURANCE
CORPORATION, in its
corporate capacity,

Plaintiff,

vs.

EDWARD V. ROBERTS,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

Case No. 89-C-774-B

AGREED ORDER AND JUDGMENT AWARDING ATTORNEY FEES

This matter comes before the Court on the application and motion of Plaintiff Federal Deposit Insurance Corporation, in its corporate capacity ("FDIC"), for attorney fees. Defendant has not responded to the FDIC's motion, but his approval thereto is evidenced by the signature of his counsel set forth below. The Court has reviewed the application, and the applicable authorities, and finds that the motion of the FDIC should be granted for the following reasons.

The application for attorney fees is based upon a promissory note executed by the Defendant in 1985 in favor of Bank of Commerce & Trust Company, Tulsa, Oklahoma, and the note is now held by FDIC. The terms of the Note provide for an award of the reasonable costs of collection upon the Note, including attorney fees. After defaulting on the note, plaintiff filed this action, Defendant answered herein, and the Court entered summary judgment in favor of the FDIC and against Defendant.

The Court finds that \$5,391.25 is a reasonable attorney fee in this case considering not only the hours spent and the rates

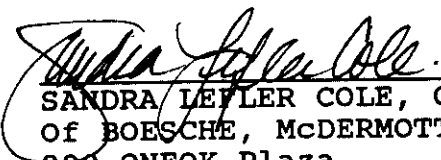
charged, but also the nature of the case and the results obtained. The Court also finds that this amount is fully documented in the record. Oliver's Sports Center Inc. v. National Standard Ins. Co., 615 P.2d 291 (Okla. 1980), State ex rel. Burk v. City of Okla. City, Okla., 598 P.2d 659 (Okla. 1979); see also, Ramos v. Lamm, 713 F.2d 546, 559 (10th Cir. 1983); Standard Oil Co. v. Osage Oil and Transportation, Inc., 122 F.R.D. 267 (N.D. Okla. 1988).

IT IS THEREFORE ORDERED that the FDIC's application for attorney fees is sustained. Judgment for attorney fees is awarded in favor of FDIC and against the Defendant in the amount of \$5,391.25.


ORDERED this 27 day of Aug, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM AND CONTENT:


SANDRA LEPLER COLE, OBA #13309
of BOESCHE, McDERMOTT & ESKRIDGE
800 ONEOK Plaza
100 West Fifth Street
Tulsa, Oklahoma 74103
(918) 583-1777

ATTORNEYS FOR PLAINTIFF FEDERAL
DEPOSIT INSURANCE CORPORATION,
in its corporate capacity


LEE I. LEVINSON, ESQ.
5310 East 31st Street, Suite #600
Tulsa, Oklahoma 74135
(918) 664-0800

ATTORNEY FOR DEFENDANT
EDWARD V. ROBERTS

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

AUG 27 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

MARCUS LEON JONES,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.


No. 90-C-88-E

ORDER

NOW on this 24th day of August, 1990 comes on for hearing the above styled case and the Court, being fully advised in the premises finds that the Defendant having been released from federal custody, which action was the relief sought in this case. Accordingly this case should appropriately be dismissed with prejudice at this time.

IT IS THEREFORE ORDERED that this case should be and is hereby dismissed with prejudice.

ORDERED this 24th day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 27 1990

JAMES CLINTON BYRNE,

Plaintiff,

v.

RON CHAMPION, et al,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

90-C-268-B

ORDER

Now before the Court is James Clinton Byrne's Petition for a Writ of Habeas Corpus. In support he relies upon a decision of the Tenth Circuit in Carbray v. Champion, No. 89-5152 (February 28, 1990).

Discovering now that the Tenth Circuit has vacated it's earlier opinion in Carbray, and has since entered a new opinion on May 25, 1990, otherwise contrary to Petitioner's argument, Petitioner now voluntarily seeks to dismiss his Petition without prejudice.

Therefore, upon good cause being shown, Petitioner's motion is, hereby, GRANTED, and the Petition for a Writ of Habeas Corpus DISMISSED WITHOUT PREJUDICE.


THOMAS R. BRETT

UNITED STATES DISTRICT JUDGE

FILED

AUG 21 1953 *QA*

90-C-20-B

Jack C. Silver, Clerk
U.S. DISTRICT COURT

THE STATE OF OKLAHOMA,


Defendant.

First, attacks on pretrial proceedings are generally ineligible for federal habeas

reviews. E.g., *Ex parte Royall*, 117 U.S. 241 (1886); *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 503-04 (1973). While there are exceptions such as speedy trial claims (*Strunk v. U.S.*, 412 U.S. 434 (1973)) or claims of excessive bail (*Stack v. Boyel*, 342 U.S. 1 (1951)), Petitioner here has not raised such claims here. Therefore, this court must abstain from the exercise of habeas jurisdiction until the exhaustion requirement of 28 U.S.C. §2254 has been satisfied. As Smith has not yet attempted to exhaust his state remedies, the Petition would ordinarily be dismissed. *Rose v. Lundy*, 455 U.S. 509 (1982). Because Smith has since been convicted of the crimes, the exhaustion requirement now applies with greater force.

Therefore, it is Ordered, that the Petition for a Writ of Habeas Corpus be DISMISSED.

Dated this 27th day of Aug, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 24 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JAMES F. YARBRO,

Plaintiff,

vs.

GARY CUPPS, Sr., AMERICAN TAXI/
AMBASSADOR-LIMOUSINE, INC.,

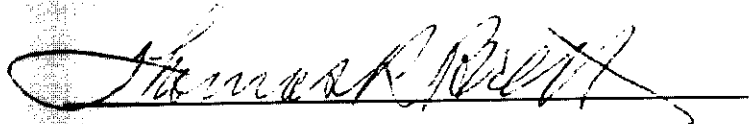
Defendants.

No. 90-C-357-B

ORDER

Before the Court is the defendants' Motion to Dismiss pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure. The plaintiff, James F. Yarbrow, an Oklahoma resident, claims that defendant, Gary Cupps, Sr., also an Oklahoma resident, made false and fraudulent statements, defaming him thereby, verbally assaulted plaintiff, and invaded plaintiff's privacy. As the plaintiff cites no jurisdictional basis for this matter in federal court, the Court hereby grants defendant's Motion to Dismiss.

IT IS SO ORDERED, this 23rd day of August, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

DEC 24 1989

CLERK
U.S. DISTRICT COURT

RONALD E. O'DELL and PAULA
O'DELL, husband and wife,

Plaintiffs,

vs.

SUN REFINING AND MARKETING
COMPANY and e.i. DU PONT DE
NEMOURS AND COMPANY,

Defendants.

No. 89-C-434-B

ORDER

This matter comes on for consideration upon the Motion of Defendant, Sun Refining and Marketing Company (Sun), for Summary Judgment. The Plaintiffs and Defendant have entered into a stipulation of facts relative to the issue of the applicability of the "Fireman's Rule". (See Stipulation of Facts, docket entry #11, filed December 21, 1989). Sun adopted these facts in support of its Motion for Summary Judgment, offering no additional "material facts to which there is no genuine dispute". Plaintiffs, in their response to Sun's Motion, set out over four pages (22 factual assertions) of controverted factual issues to which Sun did not respond in its Reply to Plaintiffs' Response.

The facts to which the parties do agree are, briefly summarized, as follows: Plaintiff, Ronald E. O'Dell, a Tulsa police officer, was on duty March 19, 1988, when a large white cloud of hydrogen fluoride was unintentionally released from the Sun's refinery west of the Arkansas River. Plaintiff first encountered

the cloud at West 3rd and South Houston in the western part of the downtown section of the City of Tulsa. Plaintiff left that location to obtain a better view of the Sun refinery but was forced to vacate the second vantage point, returning to his patrol vehicle. Plaintiff, in discharge of his duty, then located on the I-244/U.S. 75 bridge over the Arkansas river where he remained, maintaining radio contact with the police dispatcher and other emergency personnel. Plaintiff contends he was exposed to the cloud's fumes as it passed him while on the bridge.

The Fireman's Rule, succinctly stated, is: "a fireman has no cause of action against one whose negligence caused the fire in which he was injured". Rogers v. Cato Oil & Grease Co., 396 P.2d 1000 (Okla. 1964). The Fireman's Rule, under appropriate facts, extends to policemen. Kithcart v. Feldman, 215 P. 419 (Okla. 1923); Wilson v. Florida Processing, 368 So.2d 609 (Fla. 1979). The Fireman's Rule has been traditionally "premises" oriented. Kithcart, *supra*, but has been expanded, in some jurisdictions, beyond negligent conditions on the premises to include injuries arising out of the discharge of professional duties, whether on or off the premises. Sanderson v. Freedom Savings & Loan Association, 548 So.2d 221 (Fla. 1989); Rishel v. Eastern Airlines, Inc., 466 So. 2d 1136 (Fla. 1985). Cato, *supra*, did not address the issue of whether a landowner owes any duty to a fireman or police officer whose injury occurs in the line of duty when he is not on the landowner's premises, thus leaving the on/off premises issue unresolved in Oklahoma. The expansion beyond premises liability principles has been based upon public policy. Calvert v. Garvey

Elevators, 694 P.2d 433 (Ks. 1985); Wilson v. Florida Processing Company, 368 So.2d 609 (Fla. App. 1979); Whitten v. Miami-Dade Water & Sewer Authority, 357 So.2d 430 (Fla.App. 1978); California courts have engrafted the doctrine of assuming the risk onto its public policy explanation of the fireman's rule. Walters v. Sloan, 571 P.2d 609 (Cal. 1977):

"[The] fireman's rule is based on a principle as fundamental to our law today as it was centuries ago. The principle is not unique to landowner cases but is applicable to our entire system of justice -- one who has knowingly and voluntarily confronted a hazard cannot recover for injuries sustained thereby."

Ibid. at 612.

Summary judgment pursuant to Fed.R.Civ.P. 56 is appropriate where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265, 274 (1986); Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); Windon Third Oil and Gas v. Federal Deposit Insurance Corporation, 805 F.2d 342 (10th Cir. 1986). In Celotex, 477 U.S. at 317 (1986), it is stated:

"The plain language of Rule 56 (c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial."

To survive a motion for summary judgment, nonmovant "must establish that there is a genuine issue of material facts..." Nonmovant

"must do more than simply show that there is some metaphysical doubt as to the material facts." Matsushita v. Zenith, 475 U.S. 574, 585 (1986).

The Court concludes the Fireman's Rule has application notwithstanding the injury, if any, occurred off the premises of the Defendant, Sun Refining and Marketing Company. Fletcher v. Illinois Central Gulf Railroad Company, 679 S.W.2d 240, Ct.App. Ky. 1984. The Court is convinced the Oklahoma Supreme Court would so extend the application of the Fireman's Rule, Rogers v. Cato, *supra*, in view of the significant number of jurisdictions so holding. Phillips v. Hallmark, 722 S.W.2d 86 (Mo. 1986); Calvert v. Garvey Elevators, Inc., 694 P.2d 433 (Kan. 1985); Moreno v. Marrs, 695 P.2d 1322 (N.M.1984), *cert. quashed* 696 P2d 1005; Price v. Morgan, 436 So. 2d 1116 (Fla. 1983), Petition for Review Denied 447 So.2d 887 (1984); Garcia v. City of Tucson, 640 P.2d 1117 (Az 1981); Bay Area Rapid Transit v. Superior Court, 170 Cal. Rptr. 390 (1981); Holden v. Chunesteady, 161 Cal Rptr. 925 (1980); Armstrong v. Mailand, 284 N.W.2d 343 (Minn. 1979). Partial Summary Judgment is, therefore, appropriate, on the issue of the applicability of the Fireman's Rule to off-premises injuries. The Court orders the Defendant should be and it hereby Granted Summary Judgment on such issue.

Plaintiffs' statement of controverted (fact) issues relate significantly to the gross negligence, willful and wanton conduct, exception to the Fireman's Rule, applied in numerous jurisdictions. Oliver Brown Trucking Company, Inc. v. Flexon Industries

Corporation, 552 A.2d 1026, 230 N.J.Super. 117, 1988. Mahoney v. Carus Chemical Co., Inc., 510 A.2d 4, 102 N.J. 564, 1986. Defendant, in its Reply to Plaintiffs' Opposition Brief, has chosen not to respond to these controverted facts, some of which are supported by affidavits submitted by Plaintiffs, choosing instead to assert that there exists no "willful, wanton conduct" exception to the fireman's rule. The Court concludes the better view would be to recognize such exception as one which possesses the sounder reasoning and, more probably, one which would be followed by the Supreme Court of the State of Oklahoma. See Young v. Sherman-Williams Company, Inc., 569 A.2d 1173, D.C.Ct.App. 1990, and cases cited therein.

The Court concludes that a genuine dispute exists as to the very material fact of whether Defendant was guilty of gross negligence in its operation of its refinery so as to permit the release of hydrogen fluoride with which Plaintiff Ronald E. O'Dell came into contact. It is a question of fact for the jury to determine whether the actions *vel non* of Sun constitute willful and wanton conduct sufficient to create an exception to the Fireman's Rule. To that extent the Court concludes the matter is not ripe for summary judgment

However, amenable to Partial Summary Judgment is the issue of strict liability because of the involvement of an alleged ultra-hazardous material or activity. The Court concludes the application of the Fireman's Rule, if appropriate under facts yet to be developed evidentially, would preclude an action under the

theory of strict liability. Moreno v. Marrs, *supra*; Armstrong v. Mailand, *supra*; Brown v. G.E., 648 F.Supp. 470 (Ga. 1986); Flowers v. Rock Creek, 520 A.2d 361 (Md. 1987); Calvert v. Garvey Elevators, 694 P.2d 433 (Ks. 1985). Whitten v. Miami-Dade Water & Sewer Authority, 357 So.2d 430, Fla.App. 1978. The rationale of applying the rule, even in the face of an allegation of strict liability due to an ultra-hazardous material, is that the emergency which caused the fireman/policeman to be summoned resulted from the ultra-hazardous material itself. Thus, the rule, premised in part upon public policy and in part upon assuming the risk, fits. Whitten v. Miami-Dade Water & Sewer Authority, *supra*. In the joint Stipulation of Facts Plaintiff O'Dell acknowledges, that on his second encounter with the chemical cloud, he re-entered his police vehicle because of tearing and breathing problems. This was prior to setting up at his third post where, admirably, he performed his duty and allegedly suffered an injury as a result thereof.

Additionally, the Court concludes Plaintiffs' nuisance theory would be barred by application of the Fireman's Rule. Moreno v. Marrs, *supra*. Plaintiffs' "Doctrine of Rescue" theory is inappropriate. Although not included in movant's issues to be decided by summary judgment, it arises as part of Plaintiffs' opposition argument.¹ The Court determines such doctrine grants

¹ The Court is of the opinion Plaintiffs' would have the laboring oar to successfully urge the "rescue doctrine". That doctrine is most applicable when the party who attempts a rescue has no prior duty to make such attempt. Police and Firefighters are hired to make such attempts. Wilson v. Florida Processing Company,

Plaintiffs no relief if the Fireman's Rule is otherwise applicable.

Therefore, the sole factual issue that remains is whether or not the unintentional release of the hydrogen fluoride was negligently or even innocently done (liability thus being barred by application of the Fireman's Rule) or done as a result of gross negligence and/or willful and wanton conduct (thereby creating an exception to the Fireman's Rule). In the latter event, the issue of damages would remain extant.

The parties are ordered to adhere to the following schedule:

OCTOBER 12, 1990

EXCHANGE THE NAMES AND ADDRESSES OF ALL WITNESSES, INCLUDING EXPERTS, IN WRITING, ALONG WITH A BRIEF STATEMENT REGARDING EACH WITNESS' EXPECTED TESTIMONY (NOT NECESSARY IF WITNESS' DEPOSITION TAKEN)

OCTOBER 24, 1990

COMPLETE ALL DISCOVERY

NOVEMBER 5, 1990

FILE AN AGREED PRETRIAL ORDER AND EXCHANGE ALL PRENUMBERED EXHIBITS

NOVEMBER 12, 1990

FILE REQUESTED VOIR DIRE, REQUESTED INSTRUCTIONS AND ANY TRIAL BRIEFS

NOVEMBER 26, 1990

JURY TRIAL AT 9:30 A.M.

IT IS SO ORDERED this 24th day of August, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

Case will be tried on November 26, 1990 by
Judge Bruce Van Sickle.

368 S.2d 609 (Fla. 1979); Phillips v. Hallmark, 722 S.W. 2d 85 (Mo. 1986); Holden v. Chunestedy, 161 Cal.Rptr. 925 (1980).

FILED

AUG 24 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMAJAMES PETER AND ROSEMARY H.
BECK, et al

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant

Civ. No. 89-C-535-E

Civ. No. 89-C-536-E ✓


Civ. No. 89-C-537-E

Civ. No. 89-C-538-E

STIPULATION OF DISMISSAL

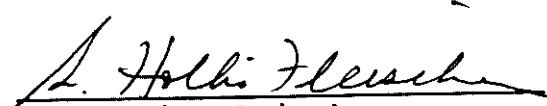
The parties, by and between their attorneys, hereby stipulate and agree that pursuant to the parties' separate settlement agreement the above-captioned action be dismissed with prejudice, the parties to bear their respective costs, including any attorneys' fees or other expenses of litigation.

TONY M. GRAHAM
United States Attorney


E. John Eagleton, Esquire
Houston and Klein, Inc.
320 South Boston, Suite 700
Tulsa, Oklahoma 74103
Telephone: (918) 583-2131

Counsel for plaintiffs

James Peter and Rosemary Beck
James E. and Jeanne A. White
Harold D. and Jean Lindsey
Bruce R. and Angie Stivers


S. Hollis Fleischer
Trial Attorney
Office of Special Litigation
Tax Division
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Washington, D.C. 20044
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(FTS) 368-6507

Counsel for defendant, United
States of America

FILED

AUG 24 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JAMES PETER AND ROSEMARY H.
BECK, et al

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant

Civ. No. 89-C-535-E

Civ. No. 89-C-536-E

Civ. No. 89-C-537-E ✓

Civ. No. 89-C-538-E

STIPULATION OF DISMISSAL

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Counsel for defendant, United
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FILED

AUG 24 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURTIN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMAJAMES PETER AND ROSEMARY H.
BECK, et al

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant

Civ. No. 89-C-535-E ✓

Civ. No. 89-C-536-E

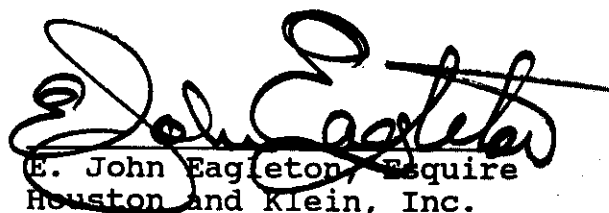
Civ. No. 89-C-537-E

Civ. No. 89-C-538-E

STIPULATION OF DISMISSAL

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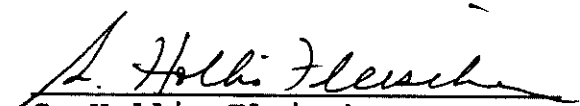
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Counsel for defendant, United
States of America

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

F I L E D

AUG 24 1990

Jac. S. ...
U.S. DISTRICT COURT

P. SMITH

Plaintiff

V.

MATT HOFF, an individual,
and JOHN DOE a/k/a SAM ROSEN
an individual,

Defendants.

89-C-369-B

ORDER


This matter comes on for consideration upon the Motion to Dismiss filed by the Defendant, Matt Hoff, on July 10, 1990. There has been no response thereto filed.

Defendant Hoff, on March 30, 1990, filed an Amended Suggestion of Death¹ pursuant to Rule 25(a)(1), Federal Rules of Civil Procedure and made proper service thereof upon Gary L. Richardson, attorney of record for Plaintiff and Gene C. Howard, Personal Representative of the Estate of P. Smith. No motion for substitution of parties has been made within the 90 days allowed by Rule 25 and Defendant requests the matter be dismissed.

The Court concludes this action should be and the same is hereby Dismissed, without prejudice.

¹ Suggesting the death of Plaintiff, P. Smith on February 17, 1990.

IT IS SO ORDERED this 24th day of August, 1990.


THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

SUZAN ROHRBAUGH, BARBARA ANN
CLAY, and DEBRA MAE AMBLER,
Individually and as the Personal
Representatives of the Estate of
Dorothy Mae Palmer,

Plaintiffs,

vs.

OWENS-CORNING FIBERGLAS, INC.,
and CELOTEX CORPORATION,

Defendants.

FILED
AUG 20 1990
Jury C. Silver, Clerk
U.S. DISTRICT COURT

No. 88-C-90-B

AMENDED JUDGMENT

On July 18, 1990, verdict of the jury was entered in favor of the following named Plaintiffs in the amounts provided:

Suzan Rohrbaugh, Barbara Ann Clay and Debra Mae Ambler, as representatives of the Estate of Dorothy Mae Palmer, Deceased	\$225,000.00
Suzan Rohrbaugh, Individually	\$ 75,000.00
Barbara Ann Clay, Individually	\$ 75,000.00
Debra Mae Ambler, Individually	\$ 75,000.00

as against the Defendants, Owens-Corning Fiberglas, Inc., and Celotex Corporation, jointly and severally.

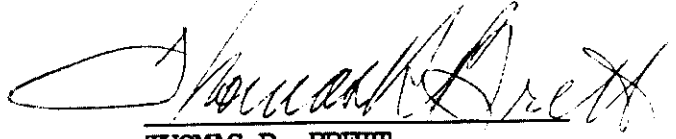
In accordance with the verdict of the jury rendered on July 18, 1990, the Plaintiffs are hereby granted prejudgment interest at the rate of 9.95% per annum (12 O.S. §727) from the date of February 1, 1988 to December 31, 1988, the rate of 10.92% per annum from the date of January 1, 1989 to December 31, 1989, and the rate of 12.35% per annum from the date of January 1, 1990 to July 18, 1990. Said prejudgment

interest shall be calculated up to the date of actual payment of settlement amounts. Total prejudgment interest in the amount of \$116,811.00 is hereby awarded.

Further, the judgment-debtor defendants Owens-Corning Fiberglas, Inc. and Celotex Corporation are hereby granted a credit to be deducted from the amount of the above said verdict in the total sum of \$270,663.00, having either been previously paid to Plaintiffs by parties other than these two Defendants or represent settlements which are to be paid in the future to the Plaintiffs by parties other than these two Defendants. Said credit sum is to be deducted pro rata from the aforesaid judgments in favor of the Plaintiffs. Future payments were present valued using an interest rate of 6%.

WHEREFORE, in accordance with the verdict of the jury rendered on July 18, 1990, judgment is hereby entered in favor of the Plaintiffs, Suzan Rohrbaugh, Barbara Ann Clay, and Debra Mae Ambler, individually and as the personal representatives of the estate of Dorothy Mae Palmer, deceased, and against the Defendants, Owens-Corning Fiberglas, Inc. and the Celotex Corporation, jointly and severally, in the amount of \$296,148.00 (which represents verdict plus prejudgment interest, less credit for monies paid or to be paid as delineated above) and post-judgment interest at the rate of 8.09% per annum from July 19, 1990 until paid. Further, costs are hereby assessed in favor of the Plaintiffs and against the two named Defendants, if timely applied for pursuant to local Rule 6E and the parties herein are to pay their own respective attorney fees.

DATED this 24th day of August, 1990.

A handwritten signature in cursive script, appearing to read "Thomas R. Brett", written over a horizontal line.

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 24 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JAMES J. SYKORA,

Plaintiff(s),

vs.

No. 88-C-553-B

JILL ZINK TARBEL, et al

Defendant(s).


JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court has been advised by counsel that this action has been settled, or is in the process of being settled. Therefore, it is not necessary that the action remain upon the calendar of the Court.

IT IS ORDERED that the action is dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED this 24th day of AUGUST, 1990.


United States District Judge
THOMAS R. BRETT

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA

BAUCOM CONCRETE CONSTRUCTION,
INC., an Oklahoma corporation,

Plaintiffs,

Case No. 89-C-1077-B

vs.

FLEMING BUILDING COMPANY,
INCORPORATED, an Oklahoma
corporation, et al.,

Defendants,

vs.

ELEVENTH AND MINGO DEVELOPMENT
COMPANY, an Oklahoma general
partnership, et al.,

Third Party Defendants.

FILED

AUG 24 1989

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FLEMING BUILDING COMPANY, INC.,
an Oklahoma corporation,

Plaintiff,

vs.

ELEVENTH AND MINGO DEVELOPMENT
COMPANY, an Oklahoma
corporation, et al.,

Defendants.

GASSER CONSTRUCTION COMPANY,

Plaintiff,

vs.

ELEVENTH AND MINGO DEVELOPMENT
COMPANY; and FLEMING BUILDING
COMPANY, INC.,

Defendants.)

JUDGMENT

On this 24 day of August, 1990, the above-captioned matter came on before this Court upon the Motion for Summary Judgment of APAC-Oklahoma, Inc., d/b/a Standard Industries ("APAC"). Based upon the statements, affidavits, and evidence filed in support of APAC's Motion for Summary Judgment, the Court finds that there is no substantial controversy surrounding any material facts and that APAC is entitled to summary judgment as a matter of law against Fleming Building Company, Incorporated.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that APAC-Oklahoma, Inc., d/b/a Standard Industries, is granted summary judgment in its favor against Fleming Building Company, Incorporated, in the amount of \$12,654.98 together with interest thereon at a rate of 1-1/2% per month from May 20, 1987 until paid.

S/ THOMAS R. BRETT

JUDGE THOMAS BRETT

89-53723P.001

FILED

AUG 24 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

JAMES PETER AND ROSEMARY H.
BECK, et al

Plaintiffs,

v.

UNITED STATES OF AMERICA,
Defendant

Civ. No. 89-C-535-E

Civ. No. 89-C-536-E

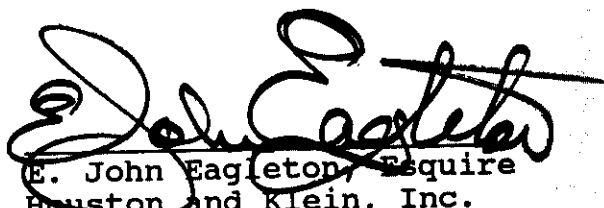
Civ. No. 89-C-537-E

Civ. No. 89-C-538-E ✓

STIPULATION OF DISMISSAL

The parties, by and between their attorneys, hereby stipulate and agree that pursuant to the parties' separate settlement agreement the above-captioned action be dismissed with prejudice, the parties to bear their respective costs, including any attorneys' fees or other expenses of litigation.

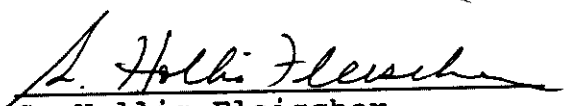
TONY M. GRAHAM
United States Attorney


E. John Eagleton, Esquire
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320 South Boston, Suite 700
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Telephone: (918) 583-2131

Counsel for plaintiffs

James Peter and Rosemary Beck
James E. and Jeanne A. White
Harold D. and Jean Lindsey
Bruce R. and Angie Stivers


S. Hollis Fleischer
Trial Attorney
Office of Special Litigation
Tax Division
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Washington, D.C. 20044
Telephone: (202) 514-6507
(FTS) 368-6507

Counsel for defendant, United
States of America

FILED

AUG 24 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FLYNN ENERGY CORP.,

Plaintiff,

VS.

NO. 86-C-163-B

TULSA COMMERCE BANCSHARES,
INC., BANK OF COMMERCE AND
TRUST COMPANY, LEE I.
LEVINSON, DALE E. MITCHELL,
SIG KOHNEN, MCorp and
FEDERAL DEPOSIT INSURANCE
CORPORATION, AS RECEIVER OF
MBANK DALLAS, NATIONAL
ASSOCIATION,

Defendants.

ORDER

Came on to be heard the Motion for Summary Judgment filed by Federal Deposit Insurance Corporation ("FDIC"), in its capacity as Receiver of MBank Dallas, National Association ("FDIC-Receiver"), Defendant herein. No one representing any party hereto, other than counsel for FDIC-Receiver, attended said hearing. The Clerk of Court advised that Plaintiffs' counsel, including counsel for J. Jerry Dickman and Don M. Flynn, had indicated in a telephone conversation with the Clerk on July 20, 1990, that Plaintiffs intended to dismiss their causes of action against FDIC-Receiver, with prejudice, and that Plaintiffs would move to administratively close this matter until such time as the bankruptcy proceedings regarding Defendant MCorp were resolved,

adjudicated or the automatic stay was lifted with respect to Plaintiffs' cause of action against MCorp.

The Court reviewed FDIC-Receiver's Motion for Summary Judgment and Brief in Support Thereto, noted that no response or contradicting summary judgment evidence was filed by Plaintiffs and concludes that, under Rule 56 of the Federal Rules of Civil Procedure and Local Rule 15b, FDIC-Receiver's Motion for Summary Judgment should be granted on the merits.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that FDIC-Receiver's Motion for Summary Judgment is hereby granted on all causes of action asserted against FDIC-Receiver by Plaintiff Flynn Energy Corp., and/or the purported assignees or transferees of said causes of action, J. Jerry Dickman and Don M. Flynn.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of FDIC-Receiver and against Plaintiffs or their assignees and transferees, including J. Jerry Dickman and Don M. Flynn, and that all causes of action against FDIC-Receiver by Plaintiff and/or the aforementioned assignees or transferees, including J. Jerry Dickman and Don M. Flynn, are hereby dismissed with prejudice.

SIGNED this 24th day of August, 1990.

S/ THOMAS R. BRETT

THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 23 1990

GLORIA STEVENS,

Plaintiff,

vs.

EN-COM PROPERTIES, LTD.,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-683-B

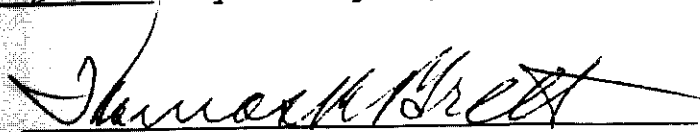
JUDGMENT DISMISSING ACTION
BY REASON OF SETTLEMENT

The Court was advised by counsel that this action had been settled, or was in the process of being settled. Therefore, it is not necessary that the action remain upon the Court's calendar.

IT IS ORDERED that the action be dismissed without prejudice. The Court retains complete jurisdiction to vacate this Order and to reopen the action upon cause shown that settlement has not been completed and further litigation is necessary.

IT IS FURTHER ORDERED that the Clerk forthwith serve copies of this Judgment by the United States mail upon the attorneys for the parties appearing in this action.

IT IS SO ORDERED, this 23rd day of August, 1989.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 23 1990

CHRYSLER CAPITAL CORP.,
a Delaware corporation

Plaintiff,

vs.

JAMES D. WHEELER,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

No. 89-C-548-B

ORDER

The parties having entered into a Settlement Agreement and these proceedings being stayed, it is hereby ordered that the Clerk administratively terminate this action in his records, without prejudice to the rights of the parties to reopen the proceedings for good cause shown for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If, within 30 days of the defendant's full compliance with, or default under the terms of the Settlement Agreement, the parties have not reopened for the purpose of obtaining a final determination herein, this action shall be deemed dismissed with prejudice.

IT IS SO ORDERED, this 23rd day of August, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

GENE L. SMITH; ARNOLD D.
BURLESON and KATHERINE M.
BURLESON, husband and wife;
STATE OF OKLAHOMA ex rel.
OKLAHOMA TAX COMMISSION;
COUNTY TREASURER and BOARD OF
COUNTY COMMISSIONERS OF TULSA
COUNTY, OKLAHOMA; CRYSTAL MOTEL,
INC., a suspended Oklahoma
corporation,

Defendants.

FILED

AUG 23 1990

C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 89-C-997-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 23rd day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer and Board of County
Commissioners of Tulsa County, Oklahoma, appear by J. Dennis
Semler, Assistant District Attorney, Tulsa County, Oklahoma; the
Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission,
appears by its attorney Lisa Haws; and the Defendants, Gene L.
Smith, Arnold D. Burleson, Katherine M. Burleson, and Crystal
Motel, Inc., a suspended Oklahoma corporation, appear not, but
make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, Gene L. Smith, acknowledged
receipt of Summons and Complaint on December 15, 1989; that the

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

Defendants, Arnold D. Burleson and Katherine M. Burleson, were served Summons and Complaint on January 5, 1990; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, acknowledged receipt of Summons and Complaint on December 4, 1989; that Defendants, County Treasurer and Board of County Commissioners of Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on December 5, 1989.

The Court further finds that the Defendant, Crystal Motel, Inc., a suspended Oklahoma corporation, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 30, 1990, and continuing through May 4, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Crystal Motel, Inc., a suspended Oklahoma corporation, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstractor filed herein with respect to the last known address of the Defendant, Crystal Motel, Inc., a suspended Oklahoma corporation. The Court conducted an inquiry into the sufficiency of the

service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Small Business Administration, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to its present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer and Board of County Commissioners of Tulsa County, Oklahoma, filed their Answers on December 26, 1989; that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, filed its Answer on December 14, 1989; and that the Defendants, Gene L. Smith, Arnold D. Burleson, Katherine M. Burleson, and Crystal Motel, Inc., a suspended Oklahoma corporation, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that this is a suit based upon a certain promissory note and for foreclosure of a mortgage and security agreements securing said promissory note upon the

following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lots Eight (8), Nine (9), Ten (10), Eleven (11), Twelve (12), Thirteen (13) and Fourteen (14), Block Seven (7), Opportunity Heights, Tulsa County, State of Oklahoma, according to the recorded corrected plat thereof, LESS a tract of Lots Eight (8) to Ten (10), inclusive, described as follows:

BEGINNING at the Southeast Corner of said Lot Eight (8); THENCE West along the South line of Lot Eight (8) to Ten (10), inclusive, a distance of One Hundred twenty-four (124) feet; THENCE North $36^{\circ} 41'$ East One Hundred seventy-three and Three tenths (173.3) feet to the North line of Lot Eight (8); THENCE east twenty-one (21) feet to the Northeast Corner of Lot Eight (8); THENCE South along the East line a distance of One Hundred thirty-nine (139) feet to the POINT OF BEGINNING.

The Court further finds that on March 13, 1985, the Defendant, Gene L. Smith, doing business as Crystal Motel, executed and delivered to American Bank of Commerce, McAlester, Oklahoma, his certain promissory note in the amount of \$375,000.00, payable in monthly installments, with interest thereon at the rate of 13.25 percent per annum. Said promissory note was transferred and assigned by American Bank of Commerce to the Small Business Administration on December 31, 1985.

The Court further finds that as security for the payment of the above-described note, the Defendant, Gene L. Smith, individually and d/b/a Crystal Motel, executed and delivered to American Bank of Commerce, McAlester, Oklahoma, his real estate mortgage dated March 13, 1985, covering the above-described property. Said mortgage was recorded on March 13, 1985, in Book 4849, Page 2349, in the records of Tulsa County,

Oklahoma. Said mortgage was assigned by American Bank of Commerce to the Small Business Administration by Assignment recorded on February 6, 1986, in Book 4923 at Page 668 in the records of the County Clerk of Tulsa County, Oklahoma.

The Court further finds that on or about March 13, 1985, as collateral security for payment of the aforesaid note, the Defendant, Gene L. Smith, individually and d/b/a Crystal Motel, executed and delivered to Plaintiff, two certain Security Agreements thereby creating in favor of Plaintiff a security interest in certain accounts receivable and inventory, all machinery, equipment, furniture and fixtures more fully described therein. The security interest of Plaintiff in said property was perfected by a Financing Statement filed with the County Clerk of Tulsa County, Oklahoma, on March 13, 1985, under file number 354993, and recorded with the County Clerk of Tulsa in Book 4849 at Page 2353, and assigned to the Small Business Administration by Assignment recorded on February 5, 1986, with the County Clerk of Tulsa County, Oklahoma, and recorded in Book 4923 at Page 61; and by a Financing Statement filed with County Clerk of Oklahoma County, Oklahoma, on March 14, 1985, under file number 22421, and assigned to the Small Business Administration by Assignment filed under number 9157 on February 5, 1986, with the County Clerk of Oklahoma County, Oklahoma.

The Court further finds that the Defendant, Gene L. Smith, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that

by reason thereof the Defendant, Gene L. Smith, is indebted to the Plaintiff in the principal sum of \$392,419.49, together with accrued interest of \$187,922.90 as of the 15th day of September, 1989, with interest thereafter at the daily rate of \$131.71, until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$377.22 (\$20.00 docket fees, \$19.52 fees for service of Summons and Complaint, \$337.70 publication fees).

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has a lien on the property which is the subject matter of this action by virtue of ad valorem taxes in the amount of \$3,199.00, plus penalties and interest, for the year 1989. Said lien is superior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, County Treasurer, Tulsa County, Oklahoma, has liens on the property which is the subject matter of this action by virtue of personal property taxes in the amount of \$289.00 for the year 1985, \$350.00 for the year 1986, and \$172.00 for the year 1988. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that the Defendant, Board of County Commissioners, Tulsa County, Oklahoma, claims no right, title, or interest in the subject real and personal property.

The Court further finds that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, has liens on the property which is the subject matter of this action by virtue of

Warrant No. STS0005503400 dated January 13, 1984, in the amount of \$15,879.39, plus interest and penalty according to law; by virtue of Warrant No. STS0005503500 dated January 13, 1984, in the amount of \$8,778.20, plus interest and penalty according to law; by virtue of Warrant No. STS0005503600 dated January 13, 1984, in the amount of \$7,027.50, plus interest and penalty according to law; by virtue of Warrant No. STS0005503700 dated January 13, 1984, in the amount of \$8,816.98, plus interest and penalty according to law; by virtue of Warrant No. STS0005503800 dated January 13, 1984, in the amount of \$21,735.00, plus interest and penalty according to law; by virtue of Warrant No. ITW0004452001 dated June 11, 1984, in the amount of \$7,954.70, plus interest and penalty according to law; by virtue of Warrant No. STS0005538200 dated May 17, 1984, in the amount of \$1,043.29, plus interest and penalty according to law; by virtue of Warrant No. STS0005538300 dated May 17, 1984, in the amount of \$677.10, plus interest and penalty according to law; by virtue of Warrant No. STS0005538400 dated May 17, 1984, in the amount of \$498.63, plus interest and penalty according to law; by virtue of Warrant No. STS0005538700 dated May 17, 1984, in the amount of \$914.57, plus interest and penalty according to law; by virtue of Warrant No. ITW0004197601 dated October 5, 1984, in the amount of \$35.81, plus interest and penalty according to law; by virtue of Warrant No. ITW0004426901 dated October 5, 1984, in the amount of \$50.50, plus interest and penalty according to law; by virtue of Warrant No. ITW0004427901 dated October 5, 1984, in the amount of \$93.22, plus interest and penalty according to law; by virtue of Warrant

No. ITW0004428201 dated October 5, 1984, in the amount of \$456.80, plus interest and penalty according to law; by virtue of Warrant No. ITW0004432501 dated November 21, 1984, in the amount of \$102.70, plus interest and penalty according to law; by virtue of Warrant No. ITW0004474401 dated January 18, 1985, in the amount of \$57.02, plus interest and penalty according to law; by virtue of Warrant No. STS0005570300 dated January 7, 1985, in the amount of \$376.44, plus interest and penalty according to law; by virtue of Warrant No. STS0005570500 dated January 7, 1985, in the amount of \$563.24, plus interest and penalty according to law; by virtue of Warrant No. STS0004802400 filed February 1, 1985, in the amount of \$431.24, plus interest and penalty according to law; by virtue of Warrant No. STS0005574900 dated January 14, 1985, in the amount of \$502.12, plus interest and penalty according to law; by virtue of Warrant No. AVD8600001001 dated April 16, 1986, in the amount of \$1,671.13, plus interest and penalty according to law; by virtue of Warrant No. STS8700273400 dated August 17, 1987, in the amount of \$220.52, plus interest and penalty according to law. Said liens are inferior to the interest of the Plaintiff, United States of America.

The Court further finds that Defendants, Arnold D. Burleson, Katherine M. Burleson, and Crystal Motel, Inc., a suspended Oklahoma corporation, are in default and have no right, title, or interest in the subject real and personal property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Gene L. Smith, in the principal sum of \$392,419.49, together with accrued

interest of \$187,922.90 as of the 15th day of September, 1989, with interest thereafter at the daily rate of \$131.71, until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus the costs of this action in the amount of \$377.22 (\$20.00 docket fees, \$19.52 fees for service of Summons and Complaint, \$337.70 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$3,199.00, plus penalties and interest, for ad valorem taxes for the year 1989, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, County Treasurer, Tulsa County, Oklahoma, have and recover judgment in the amount of \$289.00 for the year 1985, \$350.00 for the year 1986, and \$172.00 for the year 1988 for personal property taxes, plus the costs of this action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, have and recover judgment in the total amount of \$77,886.10, plus interest and penalty according to law by virtue of Warrant No. STS0005503400 dated January 13, 1984, in the amount of \$15,879.39, plus interest and penalty according to law; by virtue of Warrant No. STS0005503500 dated January 13, 1984, in the amount of \$8,778.20, plus interest and penalty according to law;

by virtue of Warrant No. STS0005503600 dated January 13, 1984, in the amount of \$7,027.50, plus interest and penalty according to law; by virtue of Warrant No. STS0005503700 dated January 13, 1984, in the amount of \$8,816.98, plus interest and penalty according to law; by virtue of Warrant No. STS0005503800 dated January 13, 1984, in the amount of \$21,735.00, plus interest and penalty according to law; by virtue of Warrant No. ITW0004452001 dated June 11, 1984, in the amount of \$7,954.70, plus interest and penalty according to law; by virtue of Warrant No. STS0005538200 dated May 17, 1984, in the amount of \$1,043.29, plus interest and penalty according to law; by virtue of Warrant No. STS0005538300 dated May 17, 1984, in the amount of \$677.10, plus interest and penalty according to law; by virtue of Warrant No. STS0005538400 dated May 17, 1984, in the amount of \$498.63, plus interest and penalty according to law; by virtue of Warrant No. STS0005538700 dated May 17, 1984, in the amount of \$914.57, plus interest and penalty according to law; by virtue of Warrant No. ITW0004197601 dated October 5, 1984, in the amount of \$35.81, plus interest and penalty according to law; by virtue of Warrant No. ITW0004426901 dated October 5, 1984, in the amount of \$50.50, plus interest and penalty according to law; by virtue of Warrant No. ITW0004427901 dated October 5, 1984, in the amount of \$93.22, plus interest and penalty according to law; by virtue of Warrant No. ITW0004428201 dated October 5, 1984, in the amount of \$456.80, plus interest and penalty according to law; by virtue of Warrant No. ITW0004432501 dated November 21, 1984, in the amount of \$102.70, plus interest and penalty according to law; by virtue

of Warrant No. ITW0004474401 dated January 18, 1985, in the amount of \$57.02, plus interest and penalty according to law; by virtue of Warrant No. STS0005570300 dated January 7, 1985, in the amount of \$376.44, plus interest and penalty according to law; by virtue of Warrant No. STS0005570500 dated January 7, 1985, in the amount of \$563.24, plus interest and penalty according to law; by virtue of Warrant No. STS0004802400 filed February 1, 1985, in the amount of \$431.24, plus interest and penalty according to law; by virtue of Warrant No. STS0005574900 dated January 14, 1985, in the amount of \$502.12, plus interest and penalty according to law; by virtue of Warrant No. AVD8600001001 dated April 16, 1986, in the amount of \$1,671.13, plus interest and penalty according to law; by virtue of Warrant No. STS8700273400 dated August 17, 1987, in the amount of \$220.52, plus interest and penalty according to law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendants, Board of County Commissioners, Tulsa County, Oklahoma, Arnold D. Burleson, Katherine M. Burleson, and Crystal Motel, Inc., a suspended Oklahoma corporation, have no right, title, or interest in the subject real and personal property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Gene L. Smith, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real and personal property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real and personal property;

Second:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$3,199.00, plus penalties and interest, for ad valorem taxes which are presently due and owing on said real property;

Third:

In payment of the judgment rendered herein in favor of the Plaintiff;

Fourth:

In payment of Defendant, County Treasurer, Tulsa County, Oklahoma, in the amount of \$811.00, personal property taxes which are currently due and owing;

Fifth:

In payment of Defendant, State of Oklahoma ex rel. Oklahoma Tax Commission, in the total amount of \$77,886.10, plus interest and penalty according to law.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real and personal property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real and personal property or any part thereof.


(Signed) H. Dale Cook


UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma


LISA HAWS, OBA #12695
Attorney for Defendant,
State of Oklahoma ex rel.
Oklahoma Tax Commission

Judgment of Foreclosure
Civil Action No. 89-C-997-C

PP/css

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

AUG 23 1988

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

LEWIS E. HALL,

Plaintiff,

vs.

Case No. 88-C-596-C

MARK H. NEWBOLD, MICHAEL L.
ZENONI, individually and as
police officers in the Police
Department of the City of
Tulsa; CITY OF TULSA, as a
municipal corporation in the
State of Oklahoma; ROY GARDNER,
individually and as a former
Police Commissioner of the City
of Tulsa, ROBERT N. DICK,
individually, as Police
Commissioner and as a former
Police Chief of the City of
Tulsa; and DREW DIAMOND,
individually, as Police Chief
of the City of Tulsa and as a
former line supervisor in the
Tulsa Police Department,

Defendants.

ORDER

Now before the Court is the motion of the defendants for partial summary judgment. This is an action pursuant to 42 U.S.C. §1983. In his Third Amended Complaint, plaintiff (who is black) alleges that he was asleep in his home on the afternoon of August 22, 1987 when Tulsa police officers Newbold and Zenoni entered his home and effected a warrantless arrest of plaintiff for the misdemeanor charge of public intoxication. Plaintiff further alleges that Newbold and Zenoni physically assaulted him during the course of the arrest. Plaintiff further alleges that the other

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individual defendants Gardner (Police Commissioner at the time of the incident), Dick (Chief of Police at the time of the incident) and Diamond ("first line supervisor" at the time of the incident) failed to properly train, control and supervise the conduct of Newbold and Zenoni, thus making municipal liability appropriate.

In their present motion, defendants dispute the factual scenario described by plaintiff, but concede that issues of material fact exist as to the liability of Newbold and Zenoni in their individual capacities. Defendants move for summary judgment as to the other defendants and move for summary judgment as to Newbold and Zenoni in their official capacities. The issues raised will now be addressed.

All individual defendants have been sued in both their official and their individual capacities. Personal-capacity suits seek to impose personal liability upon a government official for actions he takes under color of state law. Official-capacity suits generally represent only another way of pleading an action against an entity of which an officer is an agent. Kentucky v. Graham, 473 U.S. 159, 165 (1985). The Court will first address the issue of municipal liability.

The United States Supreme Court has recently reiterated the basic principles in this area:

[In *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, (1978).] we decided that a municipality can be found liable under §1983 only where the municipality itself causes the constitutional violation at issue. *Respondeat superior* or vicarious liability will not attach under §1983. "It is only when the 'execution of the government's policy or custom ... inflicts the injury' that the municipality may be held liable under §1983."

Thus, our first inquiry in any case alleging municipal liability under §1983 is the question of whether there is a direct causal link between a municipal policy or custom, and the alleged constitutional deprivation.

Canton, Ohio v. Harris, 109 S.Ct. 1197, 1203 (1989) (citations omitted).

As regards policy, a single decision by municipal policymakers may constitute such a policy under appropriate circumstances. Pembaur v. Cincinnati, 475 U.S. 469 (1986). The "guiding principles" on this point are as follows:

First, a majority of the Court agreed that municipalities may be held liable under §1983 only for acts for which the municipality itself is actually responsible, "that is, acts which the municipality has officially sanctioned or ordered." Second, only those municipal officials who have "final policymaking authority" may by their actions subject the government to §1983 liability. Third, whether a particular official has "final policymaking authority" is a question of state law. Fourth, the challenged action must have been taken pursuant to a policy adopted by the official or officials responsible under state law for making policy in that area of the city's business.

St. Louis v. Praprotnik, 108 S.Ct. 915, 924 (1988) (citations omitted).

Plaintiff herein has presented no evidence which establishes the existence of an unconstitutional policy, whatever its content, in Tulsa. No argument has been presented that any of the individual defendants had final policymaking authority in the area in question or that the arrest herein was performed pursuant to that policy.

However, municipal liability may still attach if the plaintiff proves the existence of a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law, or if authorized policymakers subsequently ratify the subordinate's decision. See Wulf v. City of Wichita, 883 F.2d 842, 868 (10th Cir. 1989). Plaintiff has not alleged ratification. As to custom, plaintiff vaguely asserts that "[d]efendants Gardner,

Dick and Diamond as supervisory officials in the defendant City of Tulsa knew or should have known that there were prior reports of specific and documented incidents of police misconduct against blacks in Tulsa" (Plaintiff's Brief at 3). As evidentiary support, plaintiff relies upon sixteen newspaper stories published during the period of February 2, 1986 to September 21, 1989. As defendants note, only one of the identified incidents occurred prior to the date of plaintiff's arrest. Some of the articles also reflect subsequent discipline imposed on the offending officers. Viewed in the light most favorable to plaintiff, the Court finds that plaintiff has not raised a genuine issue of material fact as to the existence of a custom of improper treatment of blacks or the use of excessive force by police officers in Tulsa. See Celotex Corp. v. Catrett, 477 U.S. 317 (1986).

Plaintiff also contends that municipal liability is proper due to failure to properly train Tulsa police officers. In Harris, supra, the Supreme Court restricted application of this theory to cases "where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come in contact." 109 S.Ct. at 1204. (footnote omitted). "That a particular officer may be unsatisfactorily trained will not alone suffice to fasten liability on the City, for the officer's shortcomings may have resulted from factors other than a faulty training program." Id. at 1206. The plaintiff herein has presented no evidence whatsoever regarding Tulsa's training program for its officers or even any evidence as to the training of the officers in question. Again, summary judgment is appropriate.


Plaintiff finally contends that municipal liability should attach because the other individual defendants failed to adequately supervise Newbold and Zenoni. Liability on this basis would be no more than the imposition of respondeat superior. Such a result is prohibited by Monell v. Dept. of Social Services of the City of New York, 436 U.S. 658 (1978). See also Burns v. County of King, 883 F.2d 819, 821 (9th Cir. 1989). In sum, municipal liability -- and therefore "official capacity" liability -- are inappropriate.

Similarly, plaintiff's "personal capacity" claims against the supervisory defendants must fail. To be liable under §1983, a defendant must have been personally involved in the deprivation. Coleman v. Turpen, 697 F.2d 1341, 1346 n.7 (10th Cir. 1982). There is no concept of supervisor strict liability under section 1983. Harris v. Greer, 750 F.2d 617, 618 (7th Cir. 1984). No evidence has been presented of the requisite personal participation on the part of defendants Gardner, Dick and Diamond.

As an additional ground for entry of judgment, the supervisory defendants are entitled to qualified immunity. Once the defense is raised, plaintiff must come forward with facts or allegations sufficient to show both that the defendant's alleged conduct violated the law and that the law was clearly established when the alleged violation occurred. Powell v. Mikulecky, 891 F.2d 1454, 1457 (10th Cir. 1989). While use of excessive force by a police officer violates a clearly established constitutional right, plaintiff has presented nothing which shows that the supervisory defendants' conduct violated the law. Under this record, qualified immunity protects the supervisory defendants.

It is the Order of the Court that the motion of the defendants for partial summary judgment is hereby granted. Judgment is hereby granted in favor of all defendants on all claims, with the exception that the "personal capacity" claims against defendants Newbold and Zenoni remain pending.

IT IS SO ORDERED this 23rd day of August, 1990.


H. DALE COOK
Chief Judge, U. S. District Court

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

IN RE: STOCKTON OIL/GAS CO.,) Bky. Case No. 85-01974-W
INC., THE REMINGTON COMPANY,) Bky. Case No. 85-02114-W
)
Debtors,)
)
RONCO ENERGY RESOURCES, INC.,)
)
Appellant,)
)
v.) 88-C-1482-B
)
)
J. SCOTT McWILLIAMS, TRUSTEE)
FOR STOCKTON OIL/GAS CO., INC.,)
)
Appellee.)

FILED

AUG 23 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

NOW ON THIS 23rd day of Aug, 1990, comes on for
hearing Appellant's "Motion to Dismiss Appeal", and the court
being fully advised in the premises, and for good cause shown
finds that said motion should be in all things granted.

NOW THEREFORE, IT IS HEREBY ORDERED, that the above styled
and numbered appeal is dismissed herein.

S/ THOMAS R. BRETT

JUDGE OF THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

APPROVED FOR ENTRY:

LAW OFFICES OF
REDWINE, KAPPEL AND HOCKER

By: Philip W. Redwine

PHILIP W. REDWINE
OBA NO. 7458
400 S. Crawford
Norman, OK 73069
(405) 364-5551

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 23 1990

DONALD GENE ARKLE,

Plaintiff,

vs.

INDEPENDENT SCHOOL DISTRICT NO. 1
OF TULSA COUNTY, OKLAHOMA,
d/b/a the Tulsa Public Schools,

Defendants.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

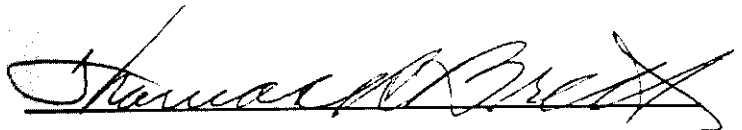
No. 88-C-1246-B

ORDER

The Court has for decision Defendant's Motion to Dismiss with prejudice filed pursuant to Rule 37 (b)(2)(C) of the Federal Rules of Civil Procedure. Defendant makes this motion due to the failure of the plaintiff, Donald Gene Arkle, to obey the Court order filed on March 16, 1990 compelling his response to the defendant's discovery requests within ten (10) days.

The Court grants the defendant's motion to dismiss, but said motion is without prejudice.

IT IS SO ORDERED, this 23rd day of August, 1990.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED
AUG 2 1990

UNITED STATES OF AMERICA,

Plaintiff,

v.

ONE 1982 MAZDA 2-DOOR COUPE,
VIN JM1FB3315C0605064,

Defendant.

Civil Action No.90-C-270-E

Jack C. Silver, Clerk
DISTRICT COURT

JUDGMENT OF FORFEITURE

This cause having come before this Court upon Plaintiff's Application filed herein, and being otherwise fully apprised in the premises, it is hereby

ORDERED, ADJUDGED, AND DECREED that Judgment be entered against the following-described defendant property.

ONE 1982 MAZDA 2-DOOR COUPE,
VIN JM1FB3315C0605064,

and against all persons or entities interested in such defendant property, and that the said defendant property be, and the same is, hereby forfeited to the United States of America for disposition by the United States Marshal according to law.

S/ JAMES O. ELLISON

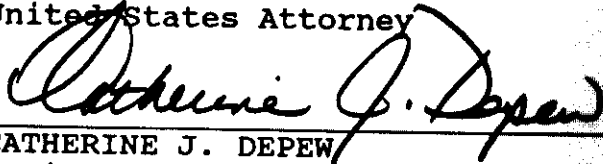
JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

APPROVED:

UNITED STATES OF AMERICA

TONY M. GRAHAM

United States Attorney

A handwritten signature in cursive script, reading "Catherine J. DePew", written over a horizontal line.

CATHERINE J. DEPEW

Assistant United States Attorney

CJD/ch
00859

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10 Tulsa, Oklahoma 74172-0154
11 Telephone: (918) 588-2700

9 Attorneys for the RESOLUTION TRUST CORPORATION,
10 as Conservator for MERCURY SAVINGS AND LOAN ASSOCIATION

11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF OKLAHOMA

13 MARRIOTT CORPORATION,

NO. 89-C-225 E

14 Plaintiff and
15 Counter-Defendant,

16 vs.

CONSOLIDATED WITH

16 RESOLUTION TRUST CORPORATION,
17 as Conservator for MERCURY
18 SAVINGS AND LOAN ASSOCIATION,

18 Defendant and
19 Counter-Plaintiff,

20 RESOLUTION TRUST CORPORATION,
21 as Conservator for MERCURY
22 SAVINGS AND LOAN ASSOCIATION,

22 Plaintiff,

23 vs.

24 CHESAPEAKE HOTEL LIMITED
25 PARTNERSHIP and MARRIOTT HOTELS,
26 INC.,

26 Defendants.

27
28 STIPULATED ORDER

FILED

AUG 24 1990

Jack C. Silver, Clerk
DISTRICT COURT

NO. 90-C-138-E

STIPULATED ORDER RE:
PARTIAL DISMISSAL OF
PETITION, AND WITHDRAWAL
OF MOTION FOR PARTIAL
SUMMARY JUDGMENT

1 This stipulated order applies only to consolidated action No.
2 90-C-138-E captioned above.

3 WHEREAS defendants in action No. 90-C-138-E Chesapeake Hotel
4 Limited Partnership ("Chesapeake") and Marriott Hotels, Inc. and
5 petitioner/plaintiff in said action Resolution Trust Corporation
6 ("RTC") as Conservator for Mercury Savings and Loan Association have
7 entered into that Stipulation Re: Voluntary Partial Dismissal of
8 Petition filed with this Court on July 25, 1990, petitioner and
9 defendants hereby stipulate that the Court may order as follows:

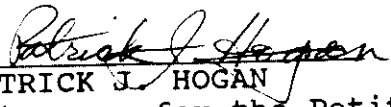
10 Petitioner RTC's claim for relief stated against Chesapeake
11 in Count I of its Petition in case No. 90-C-138-E is hereby
12 dismissed. Chesapeake's motion for partial summary judgment in case
13 No. 90-C-138-E and request for attorney's fees contained in said
14 motion, are hereby deemed withdrawn.

15 IT IS SO STIPULATED.

16 Dated: August 17, 1990

TARKINGTON, O'CONNOR & O'NEILL
A Professional Corporation

19 By:


PATRICK J. HOGAN
Attorneys for the Petitioner,
RESOLUTION TRUST CORPORATION
as Conservator for
MERCURY SAVINGS AND LOAN
LOAN ASSOCIATION

27 STIPULATED ORDER

-2-

1
2 Dated: August 20, 1990

GABLE & GOTWALS

3
4 By:

JAMES M. STURDIVANT
Attorneys for Defendants
CHESAPEAKE HOTEL LIMITED
PARTNERSHIP AND MARRIOTT
HOTELS, INC.

5
6
7 IT IS SO ORDERED this 22 day of August, 1990.

8
9 S/ JAMES O. ELLISON

10
11 JAMES O. ELLISON
United States District Judge

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19 L11C:FSL36\12932\PLD\12932.STO
20 F4

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27 STIPULATED ORDER

-3-

*entered
already in
closed June '90
wo/ prej*
FILED

AUG 21 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

SUTHERLAND LUMBER COMPANY,

Plaintiff,

v.

no. 89-C-932-C

SIMMONS INDUSTRIES, INC.,
et al,

Defendants.

ORDER OF DISMISSAL

NOW on this 20th day of August, 1990, the above and foregoing matter comes on for hearing on plaintiff Sutherland Lumber Company's Motion to Dismiss.

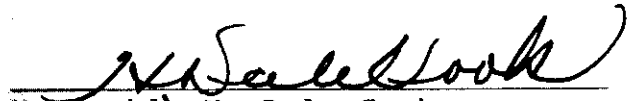
On June 27, 1990, the Court had entered an Order granting plaintiff leave to voluntarily dismiss its Complaint without prejudice pursuant to Fed.R.Civ.P. 41(a)(2) conditional upon plaintiff's payment of defendants' attorneys' fees in the amount of Six Thousand Five Hundred Dollars (\$6,500.00) and the court costs of Three Hundred Seventy-One Dollars and Fifty Cents (\$371.50).

The court finds that plaintiff has paid such fees and costs.

117

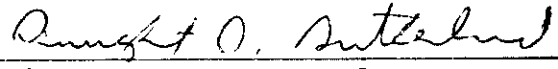
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the plaintiff's Complaint be, and hereby is, dismissed without prejudice to refiling.

IT IS SO ORDERED.

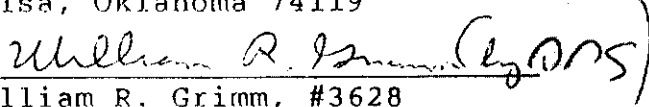

Honorable H. Dale Cook
Chief Judge, U.S. District Court

SUBMITTED AND APPROVED:

WATSON, ESS, MARSHALL & ENGGAS
130 North Cherry, P.O. Box 550
Olathe, Kansas 66061
(913) 782-2350
Fax No. 782-2012

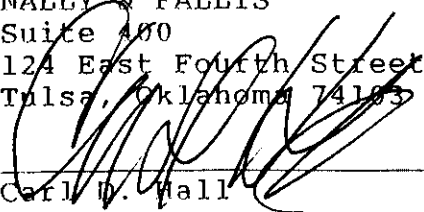

Dwight D. Sutherland, Jr.

BARROW, GADDIS, GRIFFITH & GRIMM
610 South Main Street, Suite 300
Tulsa, Oklahoma 74119


William R. Grimm, #3628
Co-Counsel for Plaintiff

APPROVED:

NICHOLS, WOLFE, STAMPER,
NALLY & FALLIS
Suite 400
124 East Fourth Street
Tulsa, Oklahoma 74103


Carl D. Wall
Counsel for Defendant

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

JAMES PACK,

Plaintiff,

v.

TIM JEFFIERS, et al.,

Defendants.

90-C-359-C

FILED

AUG 21 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER

The Court has for consideration the Report and Recommendation of the United States Magistrate filed July 26, 1990 in which the Magistrate recommended that the Motion to Dismiss be granted and case dismissed.

No exceptions or objections have **been filed** and the time for filing such exceptions or objections has expired.

After careful consideration of the **record** and the issues, the Court has concluded that the Report and Recommendation of the **United** States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the Motion to Dismiss is granted and the case is dismissed

Dated this 20th day of August, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

JESSE J. WHEELER; CAROLINE J.
WHEELER; COUNTY TREASURER,
Creek County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Creek County, Oklahoma,

Defendants.

F I L E D

AUG 21 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-501-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 21 day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Creek County, Oklahoma, and
Board of County Commissioners, Creek County, Oklahoma, appear by
Wesley R. Thompson, Assistant District Attorney, Creek County,
Oklahoma; and the Defendants, Jesse J. Wheeler and Caroline J.
Wheeler, appear not, but make default.

The Court being fully advised and having examined the
file herein finds that Defendant, County Treasurer, Creek County,
Oklahoma, acknowledged receipt of Summons and Complaint on
June 3, 1988.

The Court further finds that the Defendants, Jesse J.
Wheeler and Caroline J. Wheeler, were served by publishing notice
of this action in the Sapulpa Legal News, a newspaper of general
circulation in Creek County, Oklahoma, once a week for six (6)

NOTE: THIS ORDER IS TO BE MAILED
BY MOVANT TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

consecutive weeks beginning April 5, 1990, and continuing through May 10, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Jesse J. Wheeler and Caroline J. Wheeler, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of the Defendants, Jesse J. Wheeler and Caroline J. Wheeler. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is

sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Creek County, Oklahoma, and Board of County Commissioners, Creek County, Oklahoma, filed their Answer on October 14, 1988; that the Defendants, Jesse J. Wheeler and Caroline J. Wheeler, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on February 28, 1989, Jesse J. Wheeler and Caroline J. Wheeler filed their voluntary petition in bankruptcy in Chapter 7 in the United States Bankruptcy Court for the Northern District of Oklahoma, Case No. 89-00480-C. On May 2, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtors by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Creek County, Oklahoma, within the Northern Judicial District of Oklahoma:

A tract of land in the West Half (W/2) of the Northwest Quarter (NW/4) of Section 25, Township 18 North, Range 10 East, Creek County, Oklahoma, more particularly described as follows:

The West 561.10 feet of the North 599.38 feet of the South 1,262.50 feet of the West Half (W/2) of the Northwest Quarter (NW/4), LESS the West 330 feet of the North 227.50 feet of the South 1,262.50 feet of the West Half (W/2) of the Northwest Quarter (NW/4) of Section 25, Township 18 North, Range 10 East, Creek County, Oklahoma containing 6 acres more or less, a/k/a Route 1, Box 371, Sapulpa, Oklahoma 74066.

The Court further finds that on August 1, 1985, the Defendants, Jesse J. Wheeler and Caroline J. Wheeler, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$40,500.00, payable in monthly installments, with interest thereon at the rate of eleven and one-half percent (11.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Jesse J. Wheeler and Caroline J. Wheeler, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated August 1, 1985, covering the above-described property. Said mortgage was recorded on August 1, 1985, in Book 191, Page 356, in the records of Creek County, Oklahoma.

The Court further finds that the Defendants, Jesse J. Wheeler and Caroline J. Wheeler, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Jesse J.

Wheeler and Caroline J. Wheeler, are indebted to the Plaintiff in the principal sum of \$39,379.58, plus interest at the rate of 11.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$298.66 (\$20.00 docket fees, \$47.36 fees for service of Summons and Complaint, \$223.30 publication fees, \$8.00 fee for recording Notice of Lis Pendens).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Creek County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Jesse J. Wheeler and Caroline J. Wheeler, in the principal sum of \$39,379.58, plus interest at the rate of 11.5 percent per annum from August 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus the costs of this action in the amount of \$298.66 (\$20.00 docket fees, \$47.36 fees for service of Summons and Complaint, \$223.30 publication fees, \$8.00 fee for recording Notice of Lis Pendens), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, County Treasurer and Board of County Commissioners,

Creek County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


PHIL PINNELL, OBA #7169
Assistant United States Attorney


WESLEY R. THOMPSON, OBA #8993
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Creek County, Oklahoma

Judgment of Foreclosure
Civil Action No. 88-C-501-C

PP/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

ROBERT C. LOFTON; MARY E.
LOFTON; STATE OF OKLAHOMA
ex rel. DEPARTMENT OF HUMAN
SERVICES; TULSA ADJUSTMENT
BUREAU, INC.; FIDELITY
FINANCIAL SERVICES, INC.;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

FILED

AUG 2 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

CIVIL ACTION NO. 90-C-176-E

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 17th day
of August, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Phil Pinnell, Assistant United States Attorney;
the Defendants, County Treasurer, Tulsa County, Oklahoma, and
Board of County Commissioners, Tulsa County, Oklahoma, appear by
J. Dennis Semler, Assistant District Attorney, Tulsa County,
Oklahoma; the Defendant, Tulsa Adjustment Bureau, Inc., appears
not, having previously filed its Disclaimer; and the Defendants,
Robert C. Lofton, Mary E. Lofton, State of Oklahoma ex rel.
Department of Human Services, and Fidelity Financial Services,
Inc., appear not, but make default.

The Court being fully advised and having examined the
file herein finds that the Defendant, State of Oklahoma ex rel.
Department of Human Services, acknowledged receipt of Summons and

Complaint on March 26, 1990; that the Defendant, Tulsa Adjustment Bureau, Inc., acknowledged receipt of Summons and Complaint on March 5, 1990; that the Defendant, Fidelity Financial Services, Inc., acknowledged receipt of Summons and Complaint on March 9, 1990; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1990; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on March 6, 1990.

The Court further finds that the Defendants, Robert C. Lofton and Mary E. Lofton, were served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning May 25, 1990, and continuing through June 29, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendants, Robert C. Lofton and Mary E. Lofton, and service cannot be made upon said Defendants within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendants without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known addresses of Defendants, Robert C. Lofton and Mary E.

Lofton. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Phil Pinnell, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the parties served by publication with respect to their present or last known places of residence and/or mailing addresses. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by the Plaintiff, both as to subject matter and the Defendants served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answer on March 22, 1990; that the Defendant, Tulsa Adjustment Bureau, Inc., filed its Disclaimer on March 6, 1990; and that the Defendants, Robert C. Lofton, Mary E. Lofton, State of Oklahoma ex rel. Department of Human Services, and Fidelity Financial Services, Inc., have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on December 7, 1988, Robert Cornell Lofton and Mary Elaine Lofton f/k/a Mary Elaine Brown filed their voluntary petition in bankruptcy in Chapter 7

in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 88-03746-C. On March 14, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered a Discharge of Debtor releasing the debtors from all dischargeable debts.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Fourteen (14), Block Two (2), EL/BRAD, an Addition in Tulsa County, State of Oklahoma, according to the Recorded Plat thereof.

The Court further finds that on April 20, 1987, the Defendants, Robert C. Lofton and Mary E. Lofton, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, their mortgage note in the amount of \$28,750.00, payable in monthly installments, with interest thereon at the rate of nine percent (9%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendants, Robert C. Lofton and Mary E. Lofton, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated April 20, 1987, covering the above-described property. Said mortgage was recorded on April 29, 1987, in Book 5019, Page 1467, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendants, Robert C. Lofton and Mary E. Lofton, made default under the terms of the aforesaid note and mortgage by reason of their failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendants, Robert C. Lofton and Mary E. Lofton, are indebted to the Plaintiff in the principal sum of \$28,501.66, plus interest at the rate of 9 percent per annum from July 1, 1988 until judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$247.05 (\$20.00 docket fees, \$1.20 fees for service of Summons and Complaint, \$225.85 publication fees).

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

The Court further finds that the Defendant, Tulsa Adjustment Bureau, Inc., disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, State of Oklahoma ex rel. Department of Human Services and Fidelity Financial Services, Inc., are in default and have no right, title, or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment in rem against Defendants, Robert C. Lofton and Mary E. Lofton, in the principal sum of \$28,501.66, plus interest at the rate of 9 percent per annum from

July 1, 1988 until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus the costs of this action in the amount of \$247.05 (\$20.00 docket fees, \$1.20 fees for service of Summons and Complaint, \$225.85 publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, State of Oklahoma ex rel. Department of Human Services, Tulsa Adjustment Bureau, Inc., Fidelity Financial Services, Inc., and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff.

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.

37 DATES (11/11/11)

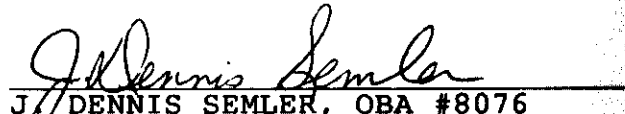
UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney



PHIL PINNELL, OBA #7169
Assistant United States Attorney



J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 90-C-176-E

PP/css

FILED

AUG 20 1990

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

Jack C. Silver, Clerk
U.S. DISTRICT COURT

JUDD & JUDD, INC.,
d/b/a BUNDY BUMPER CO.,

Plaintiff,

v.

BUNDY & BUNDY INC.,
RONALD BUNDY and DONALD
BUNDY,


Defendants.

Case No. 89-C-900-E

ORDER OF DISMISSAL WITH PREJUDICE

IN ACCORDANCE with the Agreed Order executed by all parties appearing herein and stipulating to dismissal of this action with prejudice, the court hereby finds that pursuant to Fed.R.Civ.P. 41, this matter is hereby dismissed with prejudice.

IT IS SO ORDERED, this 10th day of August 1990.


JAMES O. ELLISON
United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

WILLIAM D. DIGGS,
CSS 444 70 4697

Defendant,

CIVIL NUMBER 90-C-454 C

NOTICE OF DISMISSAL

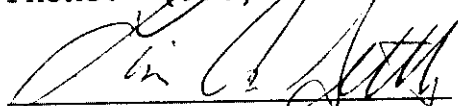
COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,

UNITED STATES OF AMERICA

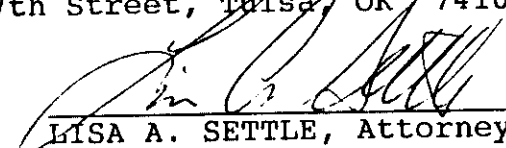
Herbert N. Standeven
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By:


LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the 16th day of August, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: WILLIAM D. DIGGS, at 3123 East 7th Street, Tulsa, OK 74104.


LISA A. SETTLE, Attorney

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

DENNIS P. WILLIAMS,
CSS 448 58 2452

Defendant,

CIVIL NUMBER 90-C-451 B

FILED

AUG 1990

J. C. SMITH
U.S. DISTRICT COURT

NOTICE OF DISMISSAL

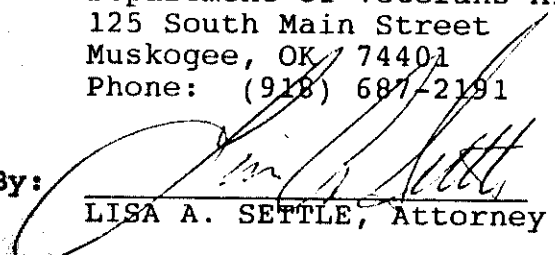
COMES NOW the Plaintiff, United States of America, by and through its attorney, Herbert N. Standeven, District Counsel, Department of Veterans Affairs, Muskogee, Oklahoma, and voluntarily dismisses said action without prejudice under the provisions of Rule 41(a)(1), Federal Rules of Civil Procedure.

Respectfully submitted,

UNITED STATES OF AMERICA

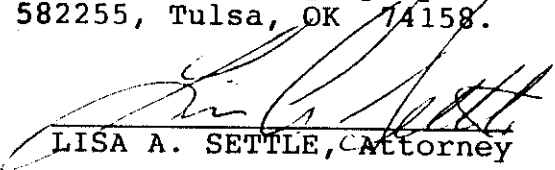
Herbert N. Standeven
District Counsel
Department of Veterans Affairs
125 South Main Street
Muskogee, OK 74401
Phone: (918) 687-2191

By:


LISA A. SETTLE, Attorney

CERTIFICATE OF MAILING

This is to certify that on the 16th day of August, 1990, a true and correct copy of the foregoing was mailed, postage prepaid thereon, to: DENNIS P. WILLIAMS, at P.O. Box 582255, Tulsa, OK 74158.


LISA A. SETTLE, Attorney

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA

VIRGIL A. COLLINS,
Plaintiff,

V.

UNITED STATES OF AMERICA,
Defendant/Counterclaim,

V.

MAX A. HEIDENREICH,
Additional Defendant on
Counterclaim.

Case No. 89-C-729-E

FILED
IN OPEN COURT
AUG 1 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

STIPULATION FOR ENTRY OF JUDGMENT

It is hereby stipulated and agreed that plaintiff Virgil A. Collins shall recover nothing upon his complaint against the United States, and that judgment may be entered in favor of the United States and against counterclaim defendant Virgil A. Collins in the amount of \$37,477.65 plus interest thereon according to law accruing from the date of assessment, January 9, 1989.

ATTORNEYS FOR THE UNITED STATES

TONY M. GRAHAM
United States Attorney

J. JOSEPH RAYMOND
Tax Division
U.S. Justice Department
P.O. Box 7238
Washington, D.C. 20044
(202) 514-6501

ATTORNEY FOR VIRGIL A. COLLINS

KELLY F. MONAGHAN
Wilkinson & Monaghan
7625 East 51st Street
Suite 210
Tulsa, OK 74145
(918) 663-2252

IT IS SO ORDERED.

Dated: 8/20/90

James O. Ellison
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 20 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

JAMES D. CALHOUN and JOAN
I. CALHOUN, Individually and
as husband and wife,

Plaintiffs,

vs.

WAL-MART STORES, INC., a
Delaware corporation,

Defendant.

Case No. 89-C-768-C

DISMISSAL BY STIPULATION WITHOUT PREJUDICE

COME NOW the Plaintiffs, James D. Calhoun and Joan I Calhoun, by and through their attorneys, James E. Frasier and Everett R. Bennett, Jr. of the law firm of Frasier & Frasier, and the Defendant, Wal-Mart Stores, Inc., by and through its attorney, Steve Holden of the law firm of Best, Sharp, Holden, Sheridan & Stritzke, pursuant to Rule 41A(ii), and hereby stipulate and dismiss the above-styled action without prejudice to the refiling of this case at a later date. Any and all costs at this time shall be born by each of the respective parties.

Respectfully submitted,

FRASIER & FRASIER

By: 

Everett R. Bennett, Jr.
1700 Southwest Boulevard
Tulsa, OK 74107
(918) 584-4724

**BEST, SHARP, HOLDEN, SHERIDAN
& STRITZKE**

By: 

Steve Holden
808 OneOk Plaza
100 W. 5th St.
Tulsa, OK 74103
(918) 582-1234

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 20 1990 *abt*

MARY CASTRO,

Plaintiff,

vs.

WAL-MART STORES, INC.,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

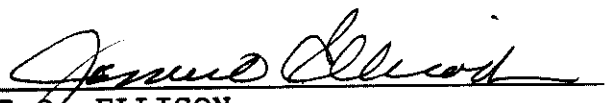
No. 89-C-1039-E ✓

JUDGMENT

This action came on for consideration before the Court, Honorable James O. Ellison, District Judge, presiding, and the issues having been duly heard and a decision having been duly rendered,

IT IS THEREFORE ORDERED that the Plaintiff Mary Castro take nothing from the Defendant Wal-Mart Stores, Inc., that the action be dismissed on the merits, and that the Defendant Wal-Mart Stores, Inc. recover of the Plaintiff Mary Castro its costs of action.

ORDERED this 17TH day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 20 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

FEDERAL DEPOSIT INSURANCE
CORPORATION as Receiver of
VICTOR SAVINGS AND LOAN
ASSOCIATION, successor in
interest to Victor Federal
Savings and Loan Association,

Plaintiff,

v.

Case No. 89-C-533-E

SUSAN WILKERSON DAVIES,
DAVID G. DAVIES, DEBRA
WILKERSON CONSEDINE and
JAMES F. CONSEDINE, II,

Defendants.

ADMINISTRATIVE CLOSING ORDER

On the representations from counsel for both sides that the parties have tentatively reached a settlement and compromise, it is ordered that the Clerk administratively terminate this action in his records without prejudice to the rights of the parties to reopen the proceeding for good cause shown, for the entry of any stipulation or order, or for any other purpose required to obtain a final determination of the litigation.

If the parties have not reopened this case within six months of this date, Plaintiff's action shall be deemed to be dismissed.

IT IS SO ORDERED this 20th day of Aug, 1990.

S/ JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

16

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FEDERAL DEPOSIT INSURANCE CORPORATION
AS RECEIVER OF VICTOR SAVINGS AND
LOAN ASSOCIATION

Plaintiff, Intervention
Defendant, Counter Defendant
and Cross Defendant,

vs.

MCCORKLE DEVELOPMENT CORP.,
EARL L. MCCORKLE, Individually
and d/b/a Southport, Inc.,
VIRGINIA R. MCCORKLE and
MARIE R. MCCORKLE,

Defendants, Intervention
Defendants, Cross Defendants,
Counter Defendants and Third
Party Plaintiffs,

and

BOARD OF COUNTY COMMISSIONERS
OF DELAWARE COUNTY, OKLAHOMA
and ELAINE WITT, COUNTY
TREASURER OF DELAWARE COUNTY,
OKLAHOMA,

Defendants and
Cross Claimants,

and

Town & Country Bank, an
Oklahoma Banking Corporation,

Defendant, Intervention
Defendant, Third Party
Defendant, Cross Claimant
and Counterclaimant,

and

London Trust,

Defendant and Plaintiff
in Intervention,

Case No. 88-C-1521-C

Case No. 88-C-1522-C

(Consolidated)

FILED
JAN 17 1989
JAMES G. SCHWARTZ, CLERK
DISTRICT COURT

106/100

JOINT STIPULATION OF DISMISSAL
WITH PREJUDICE

COME NOW the Federal Deposit Insurance Corporation as Receiver of Victor Savings and Loan Association and its counsel Susan J. Speaker of Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.; McCorkle Development Corp., Earl L. McCorkle, Earl L. McCorkle d/b/a Southport, Inc., Virginia R. McCorkle, Marie R. McCorkle, and their counsel, Ken Ray Underwood; the Federal Deposit Insurance Corporation in its corporate capacity, as successor in interest to Town and Country Bank of Bixby, Oklahoma and its counsel Renee DeMoss of Gable & Gotwals, Inc.; and the London Trust and its counsel Robert G. Brown of Brown & Breckinridge; the Board of County Commissioners of Delaware County, Oklahoma and Elaine Witt, County Treasurer of Delaware County, Oklahoma and their counsel, Jon D. Douthitt, pursuant to Fed. R. Civ. P. 41(a)(1), and hereby dismiss all claims, counterclaims or cross-claims filed in this action with prejudice to the refiling of the same.


Dated this 13th day of August, 1990.

Respectfully submitted,

HALL, ESTILL, HARDWICK, GABLE,
GOLDEN & NELSON, P.C.

By: Susan J. Speaker
Susan J. Speaker, OBA #11524
James M. Reed, OBA #7466
4100 Bank of Oklahoma Tower
One Williams Center
Tulsa, Oklahoma 74172-0154
(918) 588-2700

ATTORNEYS FOR PLAINTIFF



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(918) 592-2424

ATTORNEYS FOR DEFENDANTS
MCCORKLES

Renee DeMoss

Renee DeMoss, OBA #10779

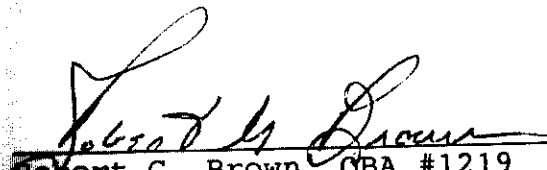
GABLE & GOTWALS, INC.

2000 Fourth National Bank Bldg.

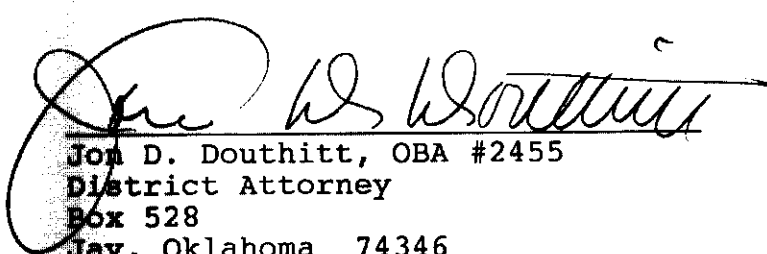
Tulsa, Oklahoma 74119

(918) 582-9201

ATTORNEYS FOR THE FDIC


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(918)

ATTORNEYS FOR THE LONDON TRUST



Jon D. Douthitt, OBA #2455
District Attorney
Box 528
Jay, Oklahoma 74346
(918) 253-4217

ATTORNEYS FOR BOARD OF COUNTY
COMMISSIONERS OF DELAWARE COUNTY,
OKLAHOMA AND ELAINE WITT, COUNTY
TREASURER OF DELAWARE COUNTY,
OKLAHOMA

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 17 1989

U.S. DISTRICT COURT

BETTY JO CAGLE, NANCY
HURLEY, ELWYN ISAACS and
NANCY MAUZY,

Plaintiffs,

vs.

No. 85-C-1099-E

ROGERS STATE COLLEGE;
THE BOARD OF REGENTS OF
ROGERS STATE COLLEGE;
WALLACE GOODMAN, ILENE
FLANAGAN, JERRY LYONS,
D. M. SOKOLOSKY and RON
WATKINS; RICHARD H. MOSIER,
Individually and in his Official
Capacity as President of Rogers
State College; TOBIE TITSWORTH;
and RAYMOND WAMSLEY,

Defendants.

JOINT STIPULATION OF PARTIAL DISMISSAL

The plaintiffs, represented by their counsel, D. Gregory Bledsoe; defendants Wallace Goodman, D. M. Sokolosky and Ron Watkins, represented by the Attorney General of Oklahoma through his Assistant, Sue Wycoff; and defendant Ilene Flanagan, represented by William S. Flanagan, pursuant to Fed.R.Civ.Proc. 41(a)(1)(ii), agree that the plaintiffs hereby dismiss the above named defendants in their individual capacity as parties in this action.

Defendants Goodman, Sokolosky, Watkins and Flanagan were members of the Board of Regents of Rogers State College at the time this action was filed. The Complaint recites that "Defendant Board is sued only for equitable relief under 42 U.S.C. §1983, and for all relief under the Fair Labor Standards Act." The Complaint also specifically names Goodman, Sokolosky, Watkins and Flanagan as defendants. Plaintiffs contend that these defendants were sued individually. There is some question on the part of these defendants as to whether the Complaint, taken as a whole, properly pleads a case against these defendants individually. However, assuming for the purposes of this stipulation that it does so properly plead, the parties

hereby stipulate that plaintiffs dismiss defendants Goodman, Sokolosky, Watkins and Flanagan in their individual capacity and do not hereafter seek damages against those defendants personally for any claims now before the Court.

The Board of Regents of Rogers State College as an entity is still being sued in its official capacity under the Fair Labor Standards Act.

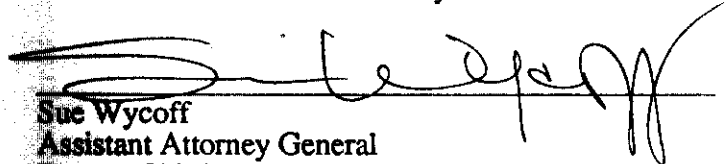
By this Stipulation the plaintiffs do not waive their right to appeal the earlier dismissal of their due process claims against the above named individual Board members. By this Stipulation defendants Goodman, Sokolosky, Watkins and Flanagan do not waive their right to object that they were not properly sued in their individual capacity on those due process claims.

Dated this 17th day of August, 1990.



D. Gregory Bledsoe

Attorney for Plaintiffs

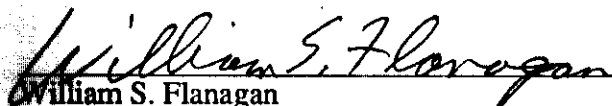


Sue Wycoff

Assistant Attorney General

Deputy Chief, Federal Division

Attorneys for Defendants Board of Regents
and Goodman, Sokolosky, Watkins and
Titsworth



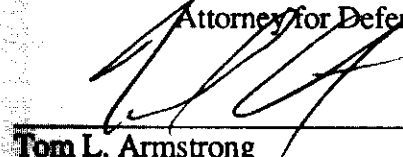
William S. Flanagan

Attorney for Defendant Flanagan



Louis W. Bullock

Attorney for Defendant Wamsley



Tom L. Armstrong

Logan V. Moss

Attorneys for Defendants Mosier and
Rogers State College

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

F I L E D

AUG 17 1990

LARRY J. RICHARDS,

Plaintiff,

v.

LOUIS W. SULLIVAN, M.D.,

Defendant.

Jack C. Silver, Clerk
U.S. DISTRICT COURT

89-C-870-E

ORDER

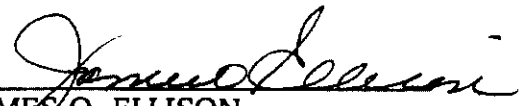
The Court has for consideration the Report and Recommendation of the United States Magistrate filed June 20, 1990 in which the Magistrate recommended that the case be dismissed.

No exceptions or objections have been filed and the time for filing such exceptions or objections has expired.

After careful consideration of the record and the issues, the Court has concluded that the Report and Recommendation of the United States Magistrate should be and hereby is adopted and affirmed.

It is, therefore, Ordered that the case is dismissed.

Dated this 17th day of August, 1990.


JAMES O. ELLISON
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT OF THE
NORTHERN DISTRICT OF OKLAHOMA

B. I. BROOKS AND SONS, INC.,

Plaintiff,

vs.

Case No. 89 C-1057E

FIGGIE INTERNATIONAL, INC., d/b/a
LOGAN COMPANY, and INSURANCE
COMPANY OF NORTH AMERICA,

Defendant and
Third-Party Plaintiff,

vs.

Commercial Union Insurance
Company,

Third-Party Defendant.

FILED

AUG 17 1990

Jack C. Silver, Clerk
U.S. DISTRICT COURT

ORDER OF DISMISSAL WITH PREJUDICE

NOW, on this date, August 17th, 1990, all parties herein, B. I. BROOKS AND SON, INC. ("Brooks"), FIGGIE INTERNATIONAL, INC., d/b/a LOGAN COMPANY ("Figgie"), INSURANCE COMPANY OF NORTH AMERICA ("ICNA"), and COMMERCIAL UNION INSURANCE COMPANY ("CUIC"), having submitted and filed their Joint Application and Stipulations for Dismissal and this proposed Order of Dismissal for this Court's approval; and, this Court finding that the claims and causes of action heretofore asserted have been compromised, settled and rendered moot and that this action now should be dismissed with prejudice;

IT HEREBY IS ORDERED that this action, including, without limitation, all claims and causes of action under Brooks' Petition

for Damages and all claims and causes of action under Figgie's Answer and Counterclaim, as amended, be and hereby are dismissed with prejudice in accordance with said Joint Application and Stipulations for Dismissal, and that each party is to bear its own costs, including attorneys' fees.

S/ JAMES O. ELLISON

UNITED STATES DISTRICT JUDGE

APPROVED AS TO FORM:

THORNTON and THORNTON,
a Professional Corporation
525 South Main, Suite 660
Tulsa, Oklahoma 74103
Telephone: (918) 587-2544
Fax No.: (918) 582-0551


By:


David M. (Mike) Thornton, Jr.
O.B.A. No. 9000

ATTORNEYS FOR B.I. BROOKS AND SON, INC.
and COMMERCIAL UNION INSURANCE COMPANY

NICHOLS, WOLFE, STAMPER, NALLY & FALLIS, INC.
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103
Telephone: (918) 584-5182

By:


Gerald G. Stamper
O.B.A. No. 8546

ATTORNEYS FOR DEFENDANT, FIGGIE
INTERNATIONAL, INC. d/b/a LOGAN
COMPANY and INSURANCE COMPANY OF
NORTH AMERICA

CERTIFICATE OF MAILING

I, David M. (Mike) Thornton, Jr., hereby certify that on the 10 day of August, 1990, a copy of the foregoing was placed in the United States mail, with postage prepaid, addressed to:

Gerald G. Stamper,
400 Old City Hall Building
124 East Fourth Street
Tulsa, Oklahoma 74103-4004

Thomas M. Moore
Frederick G. Thompson, IV
Gould & Moore, P.C.
Post Office Box 8620
Kansas City, Missouri 64114-8620


David M. (Mike) Thornton, Jr.

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE AUG 16 1993
NORTHERN DISTRICT OF OKLAHOMA

JACK C. SILVER, CLERK
U.S. DISTRICT COURT

BANK OF OKLAHOMA, N.A.,)
)
Appellant,)
)
v.) 89-C-628-C
)
OSAGE CRUDE OIL PURCHASING, INC.,)
)
Appellee.)

ORDER

THE FACTS

Osage Oil and Transportation ("Osage Transportation"), an Oklahoma trucking corporation, established a separate corporation called Osage Crude Oil Purchasing, Inc. ("Osage Crude") on February 23, 1981. Osage Crude's primary business purpose was to buy crude oil from producers and sell it to refiners. *In Re Osage Crude Oil Purchasing, Inc.*, 103 B.R. 256, 257 (Bankr. N.D. Okla. 1989)

Osage Crude, a wholly owned subsidiary of Osage Transportation, had the same officers and directors as its parent company. Although the two companies had separate banking accounts, they sometimes shared employees and there was little difference in the corporations' administrative functions. *Id.* at 258.¹

This case stems from an adversary proceeding initiated in the Bankruptcy Court by the Official Committee of Unsecured Creditors of Osage Crude on January 7, 1985. The case went to trial in March of 1987. Two years later, on July 21, 1989, the Bankruptcy

¹ The Bankruptcy Court wrote: "At all material times BOK [Bank of Oklahoma] was aware of the acts and activities of Transportation and Crude and knew, or should have known, that Crude was in fact a separate entity." *In Re Osage Crude Oil Purchasing, Inc.*, 103 B.R. at 259.

Court found in favor of the Creditors Committee.

The facts relevant to this case revolve about a three-year financial/lending relationship among Osage Transportation, the Bank of Oklahoma ("BOK")², and Osage Crude. The relationship among the parties began in 1981 when Osage Crude became a corporation³. It dissolved three years later when Osage Crude filed a petition for Chapter 11 bankruptcy.

First Issue On Appeal

For purposes of this appeal, the first material transaction among the parties took place December 16, 1982, when BOK and Osage Transportation entered into a restated credit agreement where the bank made a term loan of \$4,555,057 to Osage Transportation along with a \$1 million revolving loan.⁴*Id.* At the time of the loans, Osage Transportation's account was consistently overdrawn by as much as \$3 million. *Id.* at 259.

Then, on March 23, 1983, the three parties (Osage Crude, Osage Transportation and BOK) entered into a credit agreement whereby the bank made a \$4,692,831.18 term loan together with a \$5.5 million revolving loan to Osage Transportation. *Id.* at 259. Osage Transportation secured the loans with its assets, but Osage Crude also guaranteed the loans; and, in addition, pledged its assets. The Bankruptcy Court, however, found that Osage Crude received no consideration for its actions. *Id.* at 262. A primary issue on appeal is whether Osage Crude's guaranty and security agreements thus constitute a fraudulent, hence,

² Since March of 1972, Osage Transportation and BOK had a lending relationship involving millions of dollars. *Id.* at 257.

³ The bankruptcy court held, as a finding of fact, that Osage Transportation owed Osage Crude \$1.5 million at the time Crude became a corporation. *Id.* at 258.

⁴ The major consideration received by Transportation for the agreement was a restructuring and continuation of pre-existing loans by BOK to Osage Transportation. Osage Crude was not a party to this restated credit agreement. *Id.* at 259.

avoidable transfer. The Bankruptcy Court held that they did and were, as a consequence, avoidable. Id. BOK appeals this holding.

Second Issue On Appeal

Six days after the March 23, 1983 loans, Osage Crude and Osage Transportation agreed to allow BOK to "manually balance" their accounts.⁵ The agreement allowed BOK to transfer monies between the two corporate accounts. During the next year, as a result of this agreement, BOK repeatedly shifted money between the accounts.⁶

On May 21, 1984 BOK transferred \$6,886,000⁷ from Osage Crude's account and used most of the money to pay the balance of Osage Transportation's March 23, 1983 revolving loan -- the same loan which Osage Crude had guaranteed and pledged its assets as security.⁸ Id. at 261.

As a result of the May 21, 1984 transfer, Osage Crude, having approximately \$6 million in its account in 1983, was unable to pay its debts to some 8,000 unsecured creditors, being virtually destitute following the BOK initiated transfer. Id. Consequently, on July 10, 1984, Osage Crude filed a bankruptcy petition seeking relief under Chapter 11. The Bankruptcy Court found that the May 21, 1984 transfer was in fact, and, in law, an

⁵ A description of how this manual balancing transfer system worked appears on page 15 of Appellant's brief. Also, at the time of this agreement, BOK transferred about \$1.7 million from the Osage Crude account to the Transportation account to help pay the indebtedness of Transportation. Id. at 260.

⁶ On February 24, 1984, Osage Transportation's term loan was paid to BOK. Also, from March 30, 1983 to July 10, 1984, \$116,860,000 was transferred from Crude's account to Transportation's account, and some \$108,800,000 was transferred from Osage Transportation to Osage Crude. The Bankruptcy Court held that the net effect of these transfers was that Crude paid about eight million dollars of Transportation's indebtedness to BOK (less transportation charges). Id.

⁷ This amount was transferred to the Osage Transportation account. Of this amount, \$5,236,618.33 was used to pay the balance of Osage Transportation's revolving loan

⁸ Three days later, BOK released the security agreements of both companies.

avoidable transfer per 11 U.S.C. §548, **occurring** as it did some forty-nine days prior to the filing of the bankruptcy petition. BOK **also appeals** this ruling.

Third Issue On Appeal

The Creditors Committee, has filed a cross-appeal, appealing the Bankruptcy Court's ruling that pre-judgment interest for the Creditors Committee began accruing at 9% per annum on January 7, 1987. Appellees and Cross-Appellants thus assert that the Bankruptcy Court erred in calculating the amount of pre-judgment interest to be awarded.

STANDARD OF REVIEW

The District Court may affirm, **modify**, or review the judgment of the Bankruptcy Court applying the clearly erroneous **standard** in review of factual findings⁹. *In Re Ruti-Sweetwater, Inc.*, 836 F.2d 1263, 1266 (10th Cir. 1988). See also, Fed.R.Bky.Proc. 8013. The question for the appellate court is **not whether** it would have made the same findings as the trial court, but whether on the **entire evidence**, the court is left with the definite and firm conviction that a mistake has **been committed**. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 395 U.S. 100, 123, 89 S.Ct. 1562, 1576 (1969).

Upon review of a question of law, the court acts de novo. *In Re Ruti-Sweetwater*, 836 F.2d at 1266. Where then are mixed questions of fact and law, the standard is clear:

Where the mixed question involves primarily a factual inquiry, the clearly erroneous standard is appropriate. If, however, the mixed question primarily involves the question of legal principles, then a de novo review by the appellate court is appropriate. *Supra v. Ricketts*, 792 F.2d 958, 961 (10th Cir. 1986).

⁹ In general, a question of fact is one that can be answered with little or no reference to the law. *Matter of Tri-State Equipment, Inc.*, 792 F.2d 967, 970 (10th Cir. 1986).

DISCUSSION

Appellants offer a myriad of legal arguments to bolster their contention that the Bankruptcy Court erred.¹⁰ The arguments, however, focus on two transactions: Osage Crude's March 23, 1983 guaranty and security agreements, and the May 21, 1984 transaction by BOK, shifting some \$5.2 million from Osage Crude's account to pay Osage Transportation's revolving loan. Each transaction is discussed separately.

The March 23, 1983 Guarantee Agreement by Osage Crude

The Bankruptcy Court found that the Creditors Committee (Appellee) properly applied 11 U.S.C. 544(b) to avoid Osage Crude's March 23, 1983 guaranty and security agreement. *In Re Osage Crude Oil Purchasing, Inc.*, 103 B.R. at 262. Section 544(b) provides that the Trustee may avoid any transfer of property or any obligation incurred by the debtor *which is avoidable under applicable (state) law by a creditor holding an unsecured claim*.¹¹ On March 23, 1983, Oklahoma law provided that an unsecured creditor may avoid fraudulent transfers, as defined in the Uniform Fraudulent Conveyance Act.¹²

The Bankruptcy Court held that Osage's guaranty and security agreement constituted a security interest. *Id.* It also held that "the facts overwhelmingly show that Crude was in

¹⁰ In reviewing this case, this Court examined the intent of 11 U.S.C. § 544(b) and 11 U.S.C. § 548. Those statutes are designed to protect creditors against the depletion of the bankrupt's estate. *In Re Rodriguez*, 895 F.2d 725, 727 (11th Cir. 1990). As one court emphasized: "It is especially important to consider the goal of a law, and the effect of a particular ruling, in areas of law such as bankruptcy jurisdiction that are so strongly rooted in equitable principles." *In Re Chase & Sandborn Corp.*, 848 F.2d 1196, 1202 (11th Cir. 1988).

¹¹ Section 544(b) states in-part:

(b) The trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title [11 USCS §502] or that is not allowable only under section 502(e) of this title [11 USCS §502(e)].

¹² Okla. Stat. tit. 24 §104 was in effect at the time of the March 23, 1983 transfer. The Oklahoma Legislature repealed the law in 1986.

fact rendered insolvent by this conveyance. The creation of a security interest constitutes a transfer under 11 U.S.C. 101(50) as to creditors then existing without regard to actual intent." *Id.* at 261. The court also concluded that the transfer by Osage Crude was without fair consideration.¹³

The first issue on appeal hinges on the steps required of the Creditors' Committee when invoking 11 U.S.C. 544(b).¹⁴ The appropriate steps have been outlined as follows:

The Trustee must establish first that, at the time the transaction occurred, there was a creditor in fact in existence who was holding an unsecured claim which would be allowable under section 502 of the (Bankruptcy) Code. Second, the Trustee must establish that the transaction could have been avoided under applicable local law. *Matter of Hall*, 22 B.R. 942, 943 (M.D. Fla. 1982).

Thus, Appellees were required to show that there was a transfer of property or an obligation of the debtor, otherwise voidable under state law. The Bankruptcy Court found that Appellee made such a showing. Appellants disagree and initially argue that the Osage Crude's guaranty and security agreement did not constitute an "obligation" pursuant to 544(b).¹⁵ The Court does not concur with Appellant's position.

Generally, a guarantor incurs an obligation when he guarantees an existing debt of another. *See, In Re Stop-N-Go of Elmira* 30 B.R. 721, 725 (Bankr. W.D. N.Y. 1983). Furthermore, when a guarantor guarantees a loan simultaneously with the making of the

¹³ The Bankruptcy Court wrote, "...the genesis of the scenario of the events, the creation of the security interest, is in fact fraudulent; and it is undisputed that said transfer occurred within two years of the date of the filing of the bankruptcy (within Okla. Stat. tit. 12§ 95). By the trustee-plaintiff being able to mix and match his avoiding powers, the trustee-plaintiff may, within the statutory time as set forth in Oklahoma law, thus avoid the creation of the security interest." *In Re Osage Crude Oil Purchasing, Inc.*, 103 B.R. at 262.

¹⁴ See n. 10, *supra*.

¹⁵ Appellants also make a lengthy argument on whether the March 23, 1983 transaction was a "transfer" pursuant to 11 U.S.C. 544(b). Appellant's Brief, October 17 1989, p. 31.

loan, it incurs the obligation at the time the loan is made.¹⁶ *See, Rubin v. Manufacturers Hanover Trust Co.*, 661 F.2d 979 (2d Cir. 1981).

In this case, BOK issued a \$4,692,831.18 term loan to Osage Transportation on March 23, 1983. This term loan, used to restructure the Company's debts, required monthly payments; (*Appellant's Brief at page 13*); hence, is properly described, in and of itself, as an "obligation". In addition, BOK gave Osage Transportation a \$5.5 million revolving loan. Osage Crude guaranteed both loans. Therefore, Osage Crude, by virtue of its guaranty, incurred an "obligation" on the same day that BOK made the March 23, 1983 term loan.

Given the existence of an obligation within the purview of 544(b), the question becomes whether there was at least one unsecured creditor in existence at the time of the March 23, 1983 transaction. The Bankruptcy Court found, as a matter of fact, that there was such a creditor.¹⁷ This finding satisfies the first prong of 11 U.S.C. §544(b), since there was an "obligation" and at least one other creditor was involved.

To meet the second prong of the 544(b) test, the Creditors Committee must establish that the March 23, 1983 transaction was avoidable under Oklahoma law. The applicable statute, Okla. Stat. tit. 24 §104 (repealed 1986),¹⁸ reads as follows:

Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is

¹⁶ Although *Rubin* discusses the guaranty as it relates to 11 U.S.C. § 548, the definition of obligation also would apply to 11 U.S.C. §544(b). Both statutes relate to the same issue: avoidance of a transfer to protect the debtor's creditors. For a further discussion of this issue, see *Comment, Avoidability of Intercorporate Guarantees Under Section 548(a)(2) and 544(b) of the Bankruptcy Code*, 64 N.Car. L. Rev. 1099 (1986).

¹⁷ "The evidence shows there is no doubt that at the time Crude had substantial number of creditors including, but not limited to Mr. Jackson and 8,000 or so additional creditors who were obviously affected." *In Re Osage Crude Purchasing, Inc.*, 103 B.R. at 262. The Court is not left with a definite and firm conviction that a mistake was made in this finding.

¹⁸ Appellant agrees that this statute applies to this case. *Appellant's brief*, p. 24.

incurred without fair consideration.

The key words, for purposes of this case are "conveyance", "insolvent"¹⁹ and "fair consideration." Conveyance, as defined in the Uniform Fraudulent Conveyance Act, "includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or encumbrance." Okla. Stat. tit. 24 §101 (repealed 1986). The Bankruptcy Court found that Osage Crude pledged its assets on March 23, 1983.

Upon review, the Court finds that the Bankruptcy Court's finding is not clearly erroneous. Just as Osage Crude's guarantee constituted a "conveyance" under the Bankruptcy Code so is it a "conveyance" under 24 O.S. §101. Therefore, Osage Crude's pledge of its assets to secure Osage Transportation's loan constituted an obligation in accord with Okla. Stat. tit. 24 §104.

The next question is whether Osage Crude's obligation was incurred without "fair consideration". Fair consideration is defined in Okla. Stat. tit. 24 §103 of the Uniform Fraudulent Conveyance Act, as follows:

- (a) When in exchange for such property, or obligation as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied.
- (b) When such property or obligation is received in good faith to secure a present advance or antecedent debt in an amount not disproportionately small as compared with the value of the property or obligation obtained. Id.

Whether fair consideration has been given for a transfer is largely a question of fact. Considerable latitude must be allowed the trier of fact in reaching such a determination.

¹⁹ Appellants make no specific argument concerning whether Osage Crude was rendered insolvent as a result of the March 23, 1983 and May 21, 1984 transactions. The Bankruptcy Court's finding that the transaction rendered Crude insolvent is not clearly erroneous.

Mayo v. Pioneer Bank and Trust Company, 270 F.2d 823, 830 (5th Cir. 1959). The general rule is that when an insolvent debtor receives "less than a reasonably equivalent value" where it transfers its property in exchange for consideration to a third party, fair consideration is not given.²⁰ In such a case, the insolvent debtor is ordinarily deemed to have received little or no value. *In Re Royal Crown Bottlers*, 23 B.R. 28,30 (N.D. Ala. 1982). The *Royal Crown* court also observed:

When the consideration for a transfer passes to the parent corporation of a debtor-subsidiary making the transfer...the benefit to the debtor may be presumed to be nominal, in the absence of proof of a special benefit to it. Id.

Three exceptions to the general rule are recognized, in which an obligor is deemed to receive "reasonably equivalent value" even though it has incurred the obligation for the benefit of a third party. See, Rubin, 661 F.2d 979 (1981). A brief overview and discussion is necessary.

First, an obligation is balanced by a reasonably equivalent value when the benefit initially obtained by the third party is simply passed on to the obligor. Id. Second, an exception exists when an obligor is indebted to the beneficiary of the obligation for a similar amount. Id. Under this exception, the obligor's financial condition is similarly unaffected.

The first exception does not apply to the instant case because the Bankruptcy Court did not err in concluding that the March 23, 1983 loan guarantee by Osage Crude were not balanced by a reasonably equivalent value. The second exception does not apply as

²⁰ The Bankruptcy Code uses "reasonable equivalent value" instead of fair consideration. However, courts generally have used decisions about the latter to settle issues concerning the former. See, generally, 4 *Collier on Bankruptcy*, 548.01 (15th ed. 1979).

Osage Transportation owed Osage Crude money -- not the reverse.²¹

A third exception exists when the third party and obligor are "so related or situated that they share an identity of interests" such that what benefits one benefits the other. *In Re Royal Crown Bottlers*, 23 B.R. at 30.

The Bankruptcy Court discarded the "identity of interest" argument, concluding the two corporations were separate entities. Such a decision is dependent upon the sound discretion of the trial judge in his appraisal of the evidence. *Pacific v. United States*, 629 F.2d 162, 172 (D.C.Cir. 1980). His resolution will be left undisturbed on appeal unless clearly erroneous. *Id.* Here, the Court finds no such error.

In concluding whether a parent company and its subsidiary should be treated as one, courts generally look at several factors.²² In applying a practical and not mechanical test, the Bankruptcy Court discussed the following factors. The two companies had separate bank accounts. Furthermore, when Osage Crude was formed, it assumed Osage Transportation's functions, purchasing oil from producers, requiring those producers to execute Division Order Agreements identifying Osage Crude as the purchaser of production, thereby obligating Osage Crude to make payments to the producers. In addition, shortly after Osage Crude incorporated, producers were put on notice that any future business under existing Division Order Agreements would be with Osage Crude. The record also

²¹ The Bankruptcy Court was not clearly erroneous when it held that Osage Transportation owed Osage Crude \$1.5 million when Crude first became a corporation. *In Re Osage Crude Oil Purchasing, Inc.*, 103 B.R. at 258.

²² The factors include: 1) Whether the parent owned all or a majority of the subsidiary's capital stock; 2) Whether both entities had common directors and officers; 3) Whether the parent corporation had financed the subsidiary; 4) Whether the parent company was responsible for the incorporation of the subsidiary; 5) Whether the subsidiary had grossly inadequate capital; 6) Whether the parent company paid the salaries or expenses or losses of the subsidiary; 7) Whether the subsidiary business was independent; 8) Whether the subsidiary was referred to as a division or a department in the papers of the parent company, and 9) Whether the formal legal requirements of the subsidiary were observed. *Matter of Gulco Inv. Corp.*, 593 F.2d 921 (10th Cir. 1979). See also, *Fish v. East*, 114 F.2d 177 (10th Cir. 1940).

shows that at least one creditor testified that he considered Osage Crude a separate entity in his business dealings. *In Re Osage Crude Purchasing, Inc.*, 103 B.R. at 261.

Accordingly, review of the record shows that the Bankruptcy Court's factual determination, that Osage Crude and Osage Transportation did not have an identity of interest, was not clearly erroneous.²³ Therefore, the third exception to the general rule requiring "fair consideration" be given does not apply.

Thus, the Bankruptcy Court did not err when it held that Osage Crude did not receive fair consideration for its March 23, 1983 guaranty and security agreements to BOK. Therefore, the elements of Okla. Stat. tit 24 §104, pursuant to 11 U.S.C. §544(b) were properly met and §544(b) properly invoked.

The May 21, 1984 Transaction

On May 21, 1984, BOK took \$5,236,619.33 from Osage Crude's accounts and used the money to pay the balance of Osage Transportation's March 23, 1983 revolving loan. Forty-nine days later, Osage Crude filed bankruptcy. The issue is whether the transfer by BOK was fraudulent under 11 U.S.C. §548.²⁴ The applicable portion of §548 reads:

(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily --

(2)(a) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

²³ Appellants argue that Osage Crude received indirect benefits that were a "reasonably equivalent value" for its guaranty and security agreement. The Bankruptcy Court found that the indirect benefits were not of "reasonably equivalent value" in exchange for the agreement. In fact, it concluded that Crude was insolvent in excess of \$10 million as a result of its agreement with the Bank of Oklahoma. *In Re Osage Crude Purchasing, Inc.*, 103 B.R. at 260.

²⁴ Courts have generally placed the burden of proving all of the elements of a fraudulent transfer upon the debtor seeking to avoid the transfer. *In Re Minnesota Utility Contracting, Inc.*, 110 B.R. 414 (D. Minn. 1990).

(b)(i) was insolvent on that date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;

The first element for consideration is whether the transfer was made within one year of the date of the filing of the petition. The transfer in question took place on May 21, 1984, when BOK took \$5.2 million from Osage Crude in order to pay the debts of Osage Transportation. *Id.* at 261.²⁵ Then, on July 10, 1984, Osage Crude filed its bankruptcy petition. Consequently, the Bankruptcy Court properly concluded that the transfer took place within a year of the petition for bankruptcy.

The second issue, and the heart of this matter, is whether Osage Crude received a reasonably equivalent value in exchange for the transfer of the \$5.2 million. Appellant alleges the Bankruptcy Court improperly rejected their arguments that a reasonable equivalent value was given to Osage Crude for its \$5.2 million payment.²⁶

The purpose of voiding transfers unsupported by reasonably equivalent value is to protect creditors against the depletion of a bankrupt's estate. *In Re Rodriguez*, 895 F.2d 725 (11th Cir. 1990). This provision does not, however, authorize voiding a transfer which "confers an economic benefit upon the debtor," either directly or indirectly. *Id.*, quoting *Rubin v. Manufacturers Hanover Trust Co.* The *Rubin* court also noted:

Courts have long recognized that transfers made to benefit third parties are clearly not made for fair consideration, and, similarly, that a conveyance

²⁵ On May 21, 1984, BOK transferred \$6,886,000 from Osage Crude's account. Of that, \$5,236,000 was used to pay the balance of Transportation's March 23, 1983 revolving loan. The remaining \$1.2 million was retained by BOK for any possible future obligations. *In Re Osage Crude Purchasing, Inc.*, 103 B.R. at 261.

²⁶ Four of Appellant's arguments are: (1) That Bank of Oklahoma had a security interest in Crude's accounts receivable at the time of the transfer; (2) That Crude had guaranteed Osage Transportation's loan at an earlier date; (3) That Crude received reasonable equivalent value because it received proceeds from the Osage Transportation loan, and (4) Osage Crude indirectly benefitted from its identification with Osage Transportation. Appellant's brief, October 17, 1989.

given for fair consideration by a corporation for the benefit of an affiliate should not be regarded as given for fair consideration as to the creditors of the conveying corporations. 661 F.2d 979, 991 (2nd Cir. 1981).

The court in *Rubin* also explained why reasonably equivalent value should be given in such a transfer:

If the debtor receives property or discharges or secures an antecedent debt that is substantially equivalent in value to the property given or obligation incurred by him in exchange, then the transaction has not significantly affected his estate and his creditors have no cause to complain. By the same token, however, if the benefit of the transaction to the debtor do not substantially offset its cost to him, then his creditors have suffered...Id. at 991.

Whether a transfer is made for reasonably equivalent value is a question of fact determined in light of the facts presented in each particular case. *In Re Minnesota Utility Contracting*, 110 B.R. 414, 419 (D. Minn 1990). The Bankruptcy Court, which relied upon the *Rubin* case as the foundation for its decision, concluded that Osage Crude did not receive a reasonably equivalent value, either directly or indirectly, in exchange for the \$5.2 million payment. The question on appeal is whether this finding was clearly erroneous.

Upon review, the Court concludes that the facts of the case at bar support the bankruptcy judge's decision. Although each party submitted variegated arguments on the question, there is little doubt as to what happened following the May 21, 1984 transfer: Osage Crude could not pay its creditors and, subsequently, filed for bankruptcy. As a result, more than 8,000 unsecured creditors were left empty-handed. The purpose of 11 U.S.C. § 548 is protect creditors against the depletion of the bankrupt's estate, and such was the holding the Bankruptcy Court.

While Appellants argue that a reasonable equivalent value was exchanged for the \$5.2 million payment, such argument hinges on their assertion that Osage Crude and Osage Transportation maintained an identity of interest. The evidence is that the transfer by BOK, in fact, depleted Osage Crude's estate, much less its ability to conduct business. The depletion effectively left Osage Crude's unsecured creditors unprotected. As a result, the Bankruptcy Court did not err when it held that 11 U.S.C. §548 should be applied to rescue those creditors.²⁷

Based on the foregoing, this Court concludes that the Bankruptcy Court did not err on the issue of whether the May 21, 1984 transfer was fraudulent.²⁸

Offset

Appellants also contend that the Bankruptcy Court erred in failing to make a provision for the determination of offsets and claims by BOK which, if accounted for, would have correspondingly reduced the amount of the judgment. *Appellant's Brief, October 17, 1989, page 48.*

The applicable statute is 11 U.S.C. §502(h), which reads:

A claim arising from the recovery of property under section 522, 550, 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

In this case, subsection (d) applies, as follows:

²⁷ The third element is whether Crude became insolvent as a result of the transfer. The Bankruptcy Court said that it did. "The facts clearly show that when the transfer occurred on May 21, 1984, this rendered Crude insolvent..." This insolvency came to light when Osage Crude filed for bankruptcy on July 10, 1989. The Bankruptcy Court's finding of fact on this matter is not clearly erroneous.

²⁸ As stated earlier, mixed questions of law and fact can sometimes be difficult for Appellate courts. However, the issue of whether a transfer is fraudulent primarily involves a factual inquiry. Therefore, the clearly erroneous standard should be applied.

...the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550 or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

The May 21, 1984 transaction, whereby BOK took \$5.2 million from Osage Crude's account to pay Osage Transportation's loan, was correctly found to be an avoidable fraudulent transfer under 11 U.S.C. §548. Therefore, 11 U.S.C. §502(d) applies; and, as a result, BOK is required to turn over the \$5.2 million which it transferred to pay Osage Transportation's loans.

Appellant, however, argues that an offset is nevertheless appropriate, citing to a ruling in the 1909 Supreme Court case, *Page v. Rogers*, 211 U.S. 575, 29 S.Ct. 159, 53 L.Ed. 332 (1909). In that case, the Court concluded that a preferred creditor in a liquidation bankruptcy should be allowed to prove his claim against the bankruptcy estate and offset his dividend from the sum he was required to turn over to the Trustee.²⁹

The *Page* decision has been explained more fully in subsequent cases. The court in *Re Gander Mountain, Inc.*, 29 B.R. 260, 265 (Bankr. E.D. Wis. 1983) outlines the criteria a court should examine in deciding whether to grant an offset:

The very practical matter of resolving preference suits in bankruptcy courts must, of course, be limited to those instances where the preferred creditor is entitled to receive a dividend, and the dividend can be quickly and easily determined, and the dividend is immediately payable.

In the instant case, the issue is whether the money owed to BOK can be "quickly and easily determined".

²⁹ *Page* was decided under the 1898 Bankruptcy Act. However, 11 U.S.C. 502(h) is much broader than the Act. It also includes claims arising from avoided transfers under 11 U.S.C. §548.

A review of the record suggests that the payment to BOK cannot be so determined. First, this bankruptcy case involves a massive web of more than 8,000 unsecured creditors, who are also awaiting payments from Osage Crude's estate. The amounts due to those creditors are not easily determined.³⁰ Second, this case, having a life of more than six years, is complex. It focuses on a complicated three-year period featuring a flurry of intricate financial transactions among Osage Crude, Osage Transportation and BOK. The sheer length of the parties' briefs, coupled with the boxes of trial transcripts and related records alone, attest to the complexity of the case.

In sum, this case does not lend itself to the a "quick and easy determination" of the money allegedly owed to BOK. The Bankruptcy Court did not err when it decided not to grant BOK an offset.

The Cross Appeal by Appellee

The Creditors Committee argues that the Bankruptcy Court erred in not calculating prejudgment interest from the date of filing the adversary proceeding (January 7, 1985).³¹ Cross-Appellant also contends the Bankruptcy Court erred in its determination of the prejudgment interest rate.

Calculation of interest in a "federal question case" is governed by federal law. The general rule is that "interest is not recovered according to a rigid theory of compensation for money withheld, but is given in response to consideration of fairness." *FDIC v. Rocket Oil Corp.*, 865 F.2d 1158, 1160 (10th Cir. 1989). In addition, the district court has broad

³⁰ As Appellee points out in its December 12, 1989 brief, the dividend to each Osage creditor cannot be determined until the estate's total assets and all claims are determined for distribution purposes. The principal asset is the Appellee's judgment for \$5.2 million against BOK.

³¹ Appellants argue that the cross appeal was filed late. As a result, this Court lacks jurisdiction to review such an appeal. However, since the Bankruptcy Court's finding was not disturbed, this issue is moot.

discretion in deciding to grant prejudgment interest. *Id.* As a result, this Court must uphold the Bankruptcy Court's decision **unless** it finds an abuse of discretion.

Applying the abuse of discretion standard, a trial court's decision will not be disturbed on appeal in the absence of a **clear** error of judgment or, unless the trial court exceeded the bounds of permissible choice **under** the circumstances. *U.S. v. Ortiz*, 804 F.2d 1161, 1164, n. 2 (10th Cir. 1986).

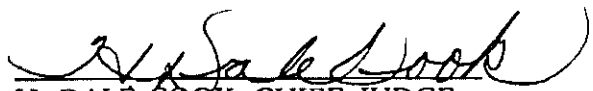
The Bankruptcy Court, in reaching **its** decision, considered several factors - including the lengthy delay of the judicial process **and** the equitable circumstances of the parties. *In Re Osage Oil Purchasing, Inc.*, 103 B.R. at 264. Appellee points out that the Bankruptcy Court's decision allowed BOK to hold **the** estimated \$5.2 million for about a two-year period, enabling the bank to collect interest. There is no evidence in the record, however, that suggests that the Bankruptcy Court failed to take that and all other material circumstances into consideration in its decision.

Therefore, this Court finds no **reversible** error on the part of the Bankruptcy Court in its determination of the pre-judgment interest applicable to the court's ruling.

CONCLUSION

The judgment of the Bankruptcy Court is AFFIRMED in its entirety.

Dated this 16th day of August, 1990.


H. DALE COOK, CHIEF JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

LIFELINE HEALTHCARE GROUP, LTD.,
MICHAEL L. ANDERSON,
TRAVIS G. MILLER,
JOHN W. BENSON,
CECIL S. MATHIS,
CHARLES J. BAZARIAN,

Defendants,

JAMCO ASSET TRUST,
MCT ASSET TRUST I
SILVERADO IRREVOCABLE TRUST II, and
JANICE L. BAZARIAN TRUST,

Nominal Defendants.

CIVIL ACTION NO.
89-C-964-B /


ORDER APPROVING THE APPLICATIONS OF THE
SPECIAL MASTER FOR ALLOWANCE OF FEES

On the 15th day of August, 1990, this matter comes on for hearing on the Applications of the Special Master for Allowance of Fees filed herein on July 9, 1990, for the Second Interim Application for Allowance of Fees, and August 10, 1990, for the Third Interim Application for Allowance of Fees, by C. Raymond Patton, Jr., the Special Master for Lifeline Healthcare Group, Ltd. ("Special Master"). Upon review of the Special Master's Applications for Fees and the evidence presented in Court, the Court finds as follows:

The Special Master has expended significant time and effort fulfilling his obligations as Special Master under the Order of this Court for which he has presented this

Court detailed time records and for which he has requested compensation for services rendered from March 1, 1990, to July 31, 1990, in the amount of \$46,006.25. The Court finds that the time expended and the hourly rates are reasonable and appropriate, and should be approved. Furthermore, all parties and counsel for other parties were present in the courtroom and had no objection to the award of fees in this matter.

IT IS THEREFORE ORDERED that the Special Master is hereby authorized and directed to receive the sum of \$46,006.25 as compensation for himself.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

FILED

AUG 16 1990

Jack C. Silver, Clerk
U. S. DISTRICT COURT

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

LIFELINE HEALTHCARE GROUP, LTD.,
MICHAEL L. ANDERSON,
TRAVIS G. MILLER,
JOHN W. BENSON,
CECIL S. MATHIS,
CHARLES J. BAZARIAN,

Defendants,

JAMCO ASSET TRUST,
MCT ASSET TRUST I
SILVERADO IRREVOCABLE TRUST II, and
JANICE L. BAZARIAN TRUST,

Nominal Defendants.

CIVIL ACTION NO.
89-C-964-B

ORDER APPROVING THE APPLICATION OF
HOUSTON AND KLEIN, INC., AS COUNSEL TO
SPECIAL MASTER OF LIFELINE HEALTHCARE GROUP, LTD.,
FOR ALLOWANCE OF LEGAL FEES AND EXPENSES

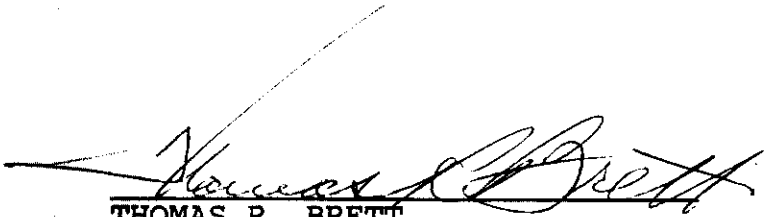
The Application of Houston and Klein, Inc., as counsel for the Special Master for Lifeline Healthcare Group, Ltd. ("Lifeline"), came on for hearing on August 15, 1990, at 3:00 p.m. Carrie C. McDaniel appeared for the Applicant and C. Raymond Patton, Jr., Special Master for Lifeline, was also present.

The Court heard the statements of counsel and finds that the fees requested are for legal and non-legal services rendered between March 1, 1990, and July 31, 1990, in the total amount of \$39,141.25, and necessary expenses of \$4,489.51.

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The Court finds that the fees and expenses requested constitute reasonable and customary charges for the services rendered, and should be approved. Furthermore, all parties and counsel for other parties were present in the courtroom and had no objection to the award of fees and expenses in this matter.

IT IS THEREFORE ORDERED that the Special Master pay the sum of \$43,630.76 to Houston and Klein, Inc., for services rendered and expenses incurred on behalf of the Special Master and Lifeline.



THOMAS R. BRETT
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,
Plaintiff,

vs.

CHAD F. STITES; NOR-COM
INVESTMENTS, an Oklahoma
Limited Partnership, Don J.
Guy, General Partner;
E. W. FISHER III; TALLANT
RENTAL PROPERTIES, INC.,
f/k/a TALLANT DEVELOPMENT
CORPORATION; CIMARRON FEDERAL
SAVINGS AND LOAN ASSOCIATION,
f/k/a Phoenix Federal Savings
and Loan Association; FRANKLIN
AND UNDERWOOD PROPERTIES, an
Oklahoma General Partnership;
COUNTY TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

CIVIL ACTION NO. 89-C-592-C

JUDGMENT OF FORECLOSURE

This matter comes on for consideration this 15 day
of Aug, 1990. The Plaintiff appears by Tony M.
Graham, United States Attorney for the Northern District of
Oklahoma, through Nancy Nesbitt Blevins, Assistant United States
Attorney; the Defendants, County Treasurer, Tulsa County,
Oklahoma, and Board of County Commissioners, Tulsa County,
Oklahoma, appear by J. Dennis Semler, Assistant District
Attorney, Tulsa County, Oklahoma; the Defendants, Nor-Com
Investments, an Oklahoma Limited Partnership, Don J. Guy, General
Partner, and Cimarron Federal Savings and Loan Association f/k/a
Phoenix Federal Savings and Loan Association, appear not, having
previously filed their Disclaimers; and the Defendants, Chad F.

NOTE: THIS ORDER IS TO BE MAILED
BY NOTARY TO ALL COUNSEL AND
PRO SE LITIGANTS IMMEDIATELY
UPON RECEIPT.

Stites, E. W. Fisher III, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation, and Franklin and Underwood Properties, an Oklahoma General Partnership, appear not, but make default.

The Court being fully advised and having examined the file herein finds that the Defendant, Chad F. Stites, acknowledged receipt of Summons and Complaint on July 24, 1989; that the Defendant, Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, acknowledged receipt of Summons and Complaint on July 21, 1989; that the Defendant, E. W. Fisher III, acknowledged receipt of Summons and Complaint on October 6, 1989; that the Defendant, Cimarron Federal Savings and Loan Association f/k/a Phoenix Federal Savings and Loan Association, acknowledged receipt of Summons and Complaint on July 20, 1989; that the Defendant, Franklin and Underwood Properties, an Oklahoma General Partnership, acknowledged receipt of Summons and Complaint on July 20, 1989; that Defendant, County Treasurer, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1989; and that Defendant, Board of County Commissioners, Tulsa County, Oklahoma, acknowledged receipt of Summons and Complaint on July 19, 1989.

The Court further finds that the Defendant, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation, was served by publishing notice of this action in the Tulsa Daily Business Journal & Legal Record, a newspaper of general circulation in Tulsa County, Oklahoma, once a week for six (6) consecutive weeks beginning March 30, 1990, and continuing

through May 4, 1990, as more fully appears from the verified proof of publication duly filed herein; and that this action is one in which service by publication is authorized by 12 O.S. Section 2004(c)(3)(c). Counsel for the Plaintiff does not know and with due diligence cannot ascertain the whereabouts of the Defendant, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation, and service cannot be made upon said Defendant within the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, or upon said Defendant without the Northern Judicial District of Oklahoma or the State of Oklahoma by any other method, as more fully appears from the evidentiary affidavit of a bonded abstracter filed herein with respect to the last known address of the Defendant, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation. The Court conducted an inquiry into the sufficiency of the service by publication to comply with due process of law and based upon the evidence presented together with affidavit and documentary evidence finds that the Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, and its attorneys, Tony M. Graham, United States Attorney for the Northern District of Oklahoma, through Nancy Nesbitt Blevins, Assistant United States Attorney, fully exercised due diligence in ascertaining the true name and identity of the party served by publication with respect to its present or last known place of residence and/or mailing address. The Court accordingly approves and confirms that the service by publication is sufficient to confer jurisdiction upon this Court to enter the relief sought by

the Plaintiff, both as to subject matter and the Defendant served by publication.

It appears that the Defendants, County Treasurer, Tulsa County, Oklahoma, and Board of County Commissioners, Tulsa County, Oklahoma, filed their Answers on August 4, 1989; that the Defendant, Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, filed its Disclaimer on July 26, 1989; that the Defendant, Cimarron Federal Savings and Loan Association f/k/a Phoenix Federal Savings and Loan Association, filed its Disclaimer on August 3, 1989; and that the Defendants, Chad F. Stites, E. W. Fisher III, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation, and Franklin and Underwood Properties, an Oklahoma General Partnership, have failed to answer and their default has therefore been entered by the Clerk of this Court.

The Court further finds that on November 30, 1987, Donald J. Guy d/b/a Nor-Com Investments, filed his voluntary petition in bankruptcy in the United States Bankruptcy Court, Northern District of Oklahoma, Case No. 87-03339-C. On June 1, 1989, the United States Bankruptcy Court for the Northern District of Oklahoma entered its order modifying the automatic stay afforded the debtor by 11 U.S.C. § 362 and directing abandonment of the real property subject to this foreclosure action and which is described below.

The Court further finds that this is a suit based upon a certain mortgage note and for foreclosure of a mortgage securing said mortgage note upon the following described real

property located in Tulsa County, Oklahoma, within the Northern Judicial District of Oklahoma:

Lot Thirty-five (35), Block Six (6), LAKE-VIEW HEIGHTS AMENDED ADDITION to the City of Tulsa, Tulsa County, State of Oklahoma, according to the recorded plat thereof.

The Court further finds that on February 16, 1978, the Defendant, Chad F. Stites, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, his mortgage note in the amount of \$10,650.00, payable in monthly installments, with interest thereon at the rate of eight and one-half percent (8.5%) per annum.

The Court further finds that as security for the payment of the above-described note, the Defendant, Chad F. Stites, executed and delivered to the United States of America, acting on behalf of the Administrator of Veterans Affairs, now known as Secretary of Veterans Affairs, a mortgage dated February 16, 1978, covering the above-described property. Said mortgage was recorded on February 27, 1978, in Book 4312, Page 1169, in the records of Tulsa County, Oklahoma.

The Court further finds that the Defendant, Chad F. Stites, made default under the terms of the aforesaid note and mortgage by reason of his failure to make the monthly installments due thereon, which default has continued, and that by reason thereof the Defendant, Chad F. Stites, is indebted to the Plaintiff in the principal sum of \$9,244.57, plus interest at the rate of 8.5 percent per annum from September 1, 1987 until

judgment, plus interest thereafter at the legal rate until fully paid, and the costs of this action in the amount of \$275.45 (\$20.00 docket fees, \$255.45 publication fees).

The Court further finds that the Defendant, Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendant, Cimarron Federal Savings and Loan Association f/k/a Phoenix Federal Savings and Loan Association, disclaims any right, title, or interest in the subject real property.

The Court further finds that the Defendants, E. W. Fisher III, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation, and Franklin and Underwood Properties, an Oklahoma General Partnership, are in default and therefore have no right, title, or interest in the subject real property.

The Court further finds that the Defendants, County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, claim no right, title or interest in the subject real property.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Plaintiff have and recover judgment against Defendant, Chad F. Stites, in the principal sum of \$9,244.57, plus interest at the rate of 8.5 percent per annum from September 1, 1987 until judgment, plus interest thereafter at the current legal rate of 7.88 percent per annum until paid, plus the costs of this action in the amount of \$275.45 (\$20.00 docket fees, \$255.45

publication fees), plus any additional sums advanced or to be advanced or expended during this foreclosure action by Plaintiff for taxes, insurance, abstracting, or sums of the preservation of the subject property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants, Nor-Com Investments, an Oklahoma Limited Partnership, Don J. Guy, General Partner, E. W. Fisher III, Tallant Rental Properties, Inc. f/k/a Tallant Development Corporation, Cimarron Federal Savings and Loan Association f/k/a Phoenix Federal Savings and Loan Association, Franklin and Underwood Properties, an Oklahoma General Partnership, and County Treasurer and Board of County Commissioners, Tulsa County, Oklahoma, have no right, title, or interest in the subject real property.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that upon the failure of said Defendant, Chad F. Stites, to satisfy the money judgment of the Plaintiff herein, an Order of Sale shall be issued to the United States Marshal for the Northern District of Oklahoma, commanding him to advertise and sell with appraisement the real property involved herein and apply the proceeds of the sale as follows:

First:

In payment of the costs of this action accrued and accruing incurred by the Plaintiff, including the costs of sale of said real property;

Second:

In payment of the judgment rendered herein in favor of the Plaintiff;

The surplus from said sale, if any, shall be deposited with the Clerk of the Court to await further Order of the Court.


IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that from and after the sale of the above-described real property, under and by virtue of this judgment and decree, all of the Defendants and all persons claiming under them since the filing of the Complaint, be and they are forever barred and foreclosed of any right, title, interest or claim in or to the subject real property or any part thereof.


(Signed) H. Dale Cook

UNITED STATES DISTRICT JUDGE

APPROVED:

TONY M. GRAHAM
United States Attorney


NANCY NESBITT BLEVINS, OBA #6634
Assistant United States Attorney


J. DENNIS SEMLER, OBA #8076
Assistant District Attorney
Attorney for Defendants,
County Treasurer and
Board of County Commissioners,
Tulsa County, Oklahoma

Judgment of Foreclosure
Civil Action No. 89-C-592-C

NNB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DONALD RAY CONNER; MARSHA GAYLE
CONNER; COUNTY TREASURER,
Rogers County, Oklahoma; and
BOARD OF COUNTY COMMISSIONERS,
Rogers County, Oklahoma,

Defendants.

CIVIL ACTION NO. 88-C-1462-B

DEFICIENCY JUDGMENT

This matter comes on before the Court this 16th of August, 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 12th day of July, 1990, and a copy of the Motion was mailed to Donald Ray Conner, 2117 East Skelly Drive, No. 105-2, Tulsa, Oklahoma 74105, Marsha Gayle Conner, 2917 North Park, Claremore, Oklahoma 74017, and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Peter Bernhardt, Assistant United States Attorney, and the Defendants, Donald Ray Conner and Marsha Gayle Conner, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on December 30, 1988, in favor of the Plaintiff United States of America, and against

the Defendants, Donald Ray Conner and Marsha Gayle Conner, with interest and costs to date of sale is \$75,205.28.

The Court further finds that the appraised value of the real property at the time of sale was \$56,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered December 30, 1988, for the sum of \$42,061.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 6th day of August, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendants, Donald Ray Conner and Marsha Gayle Conner, as follows:

Principal Balance as of 12/30/88	\$55,560.44
Interest	16,648.04
Late Charges to Date of Judgment	571.12
Appraisal by Agency	675.00
Management Broker Fees to Date of Sale	319.20
Abstracting	224.00
Publication Fees of Notice of Sale	145.48
Appraisers' Fees	105.00
1988 Taxes	467.00
1989 Taxes	<u>490.00</u>
TOTAL	\$75,205.28
Less Credit of Appraised Value	- <u>56,000.00</u>
DEFICIENCY	\$19,205.28

plus interest on said deficiency judgment at the legal rate of 2.88 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendants, Donald Ray Conner and Marsha Gayle Conner, a deficiency judgment in the amount of \$19,205.28, plus interest at the legal rate of 2.88 percent per annum on said deficiency judgment from date of judgment until paid.

UNITED STATES DISTRICT JUDGE

PB/css

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JAMES LEE BELL; GENA KELLENE
BELL; JOHN DOE, Tenant; COUNTY
TREASURER, Tulsa County,
Oklahoma; and BOARD OF COUNTY
COMMISSIONERS, Tulsa County,
Oklahoma,

Defendants.

Jack C. ...
U.S. DISTRICT COURT

CIVIL ACTION NO. 88-C-505-B

DEFICIENCY JUDGMENT

This matter comes on before the Court this 16th of August, 1990, on the Motion of the Plaintiff United States of America for leave to enter a Deficiency Judgment which Motion was filed on the 16th day of July, 1990, and a copy of the Motion was mailed to James Lee Bell, 3677 Country Club Road, Apartment 7, Muskogee, Oklahoma 74403, Scott W. Bradshaw, Esq., P.O. Box 14130, Tulsa, Oklahoma 74159-1130 and all counsel of record. The Plaintiff, United States of America, acting on behalf of the Secretary of Veterans Affairs, appeared by Tony M. Graham, United States Attorney for the Northern District of Oklahoma through Nancy Nesbitt Blevins, Assistant United States Attorney, and the Defendant, James Lee Bell, appeared neither in person nor by counsel.

The Court upon consideration of said Motion finds that the amount of the Judgment rendered herein on May 16, 1989, in favor of the Plaintiff United States of America, and against the Defendant, James Lee Bell, with interest and costs to date of sale is \$51,991.45.

The Court further finds that the appraised value of the real property at the time of sale was \$20,000.00.

The Court further finds that the real property involved herein was sold at Marshal's sale, pursuant to the Judgment of this Court entered May 16, 1989, for the sum of \$15,939.00 which is less than the market value.

The Court further finds that the said Marshal's sale was confirmed pursuant to the Order of this Court on the 6th day of August, 1990.

The Court further finds that the Plaintiff, United States of America on behalf of the Secretary of Veterans Affairs, is accordingly entitled to a deficiency judgment against the Defendant, James Lee Bell, as follows:

Principal Balance as of 5/16/89	\$34,953.51
Interest	16,596.94
Abstracting	83.00
Publication Fees of Notice of Sale	163.00
Appraisers' Fees	105.00
Evidentiary Affidavit	<u>90.00</u>
TOTAL	\$51,991.45
Less Credit of Appraised Value	- <u>20,000.00</u>
DEFICIENCY	\$31,991.45

plus interest on said deficiency judgment at the legal rate of 7.88 percent per annum from date of deficiency judgment until paid; said deficiency being the difference between the amount of Judgment rendered herein and the appraised value of the property herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the United States of America on behalf of the Secretary of Veterans Affairs have and recover from Defendant, James Lee Bell, a deficiency judgment in the amount of \$31,991.45, plus interest at the legal rate of 7.88 percent per annum on said deficiency judgment from date of judgment until paid.

S/ THOMAS R. BRIDG

UNITED STATES DISTRICT JUDGE

NNB/css